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WHEN: Tuesday, April 10, 2012
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2012–0344; Special Conditions No. 25–461–SC]

Special Conditions: Dassault Aviation, Model Falcon 7X Airplanes; Seats With Inflatable Shoulder Straps

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Dassault Aviation Model Falcon 7X airplane. This airplane will have a novel or unusual design feature associated with seats with inflatable shoulder straps. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is March 19, 2012. We must receive your comments by May 11, 2012.

ADDRESSES: Send comments identified by docket number FAA–2012–0344 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 8 a.m. and 5 p.m., Monday through Friday, except federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

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

FOR FURTHER INFORMATION CONTACT: Dan Jacquet, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2676; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On March 15, 2011, Dassault Aviation applied for a change to Type Certificate No. A59NM to install an inflatable restraint system on side facing divans in Dassault Aviation Model Falcon 7X airplanes (hereafter referred to as ''Falcon 7X''). The Falcon 7X is a 19-passenger, transport category airplane powered by three aft-mounted Pratt & Whitney PW307A high-bypass-ratio turbofan engines. Maximum takeoff weight is 69,000 pounds, and maximum certified altitude is 51,000 feet with a range of 5,700 nautical miles.

The inflatable restraint system is designed to limit occupant forward excursion in the event of an accident. This will reduce the potential for head injury, thereby reducing the Head Injury Criteria (HIC) measurement. The inflatable restraint system behaves similarly to an automotive inflatable airbag, but in this case the airbag is integrated into the shoulder strap and inflates away from the seated occupant. While inflatable airbags are now standard in the automotive industry, the use of an inflatable shoulder strap is novel for commercial aviation.

Title 14, Code of Federal Regulations (14 CFR) 25.785 requires that occupants be protected from head injury by either the elimination of any injurious object within the striking radius of the head, or by padding. Traditionally, this has required a setback of 35 inches from any bulkhead or other rigid interior feature or, where not practical, specified types of padding. The relative effectiveness of these means of injury protection was not quantified. With the adoption of Amendment 25–64 to part 25, specifically § 25.562, a new standard that quantifies required head injury protection was created.

Section 25.562 specifies that each seat type design approved for crew or passenger occupancy during takeoff and landing must successfully complete dynamic tests or be shown to be compliant by rational analysis based on dynamic tests of a similar type seat. In particular, the regulations require that

persons not suffer serious head injury under the conditions specified in the tests, and that protection must be provided or the seat be designed so that the head impact does not exceed a HIC of 1000 units. While the test conditions described for HIC are detailed and specific, it is the intent of the requirement that an adequate level of head injury protection be provided for passengers in a severe crash.

Because §§ 25.562 and 25.785 and associated guidance do not adequately address seats with inflatable shoulder straps, the FAA recognizes that appropriate pass/fail criteria need to be developed that do fully address the safety concerns specific to occupants of these seats.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Dassault Aviation must show that the Falcon 7X, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A59NM or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A59NM are as follows: 14 CFR part 25, effective February 1, 1965, including Amendments 25–1 through 25–111 in entirety, and in accordance with 14 CFR part 11, Special Conditions No. 25–346–SC: High Intensity Radiated Fields (HIRF) Protection.

The U.S. type certification basis for the Falcon 7X is established in accordance with 14 CFR 21.29 and 21.17 and the type certification application date. The U.S. type certification basis is listed in Type Certification Data Sheet No. A59NM.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Falcon 7X because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

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

In addition to the applicable airworthiness regulations and special conditions, the Falcon 7X must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Falcon 7X will incorporate the following novel or unusual design feature: Dassault Aviation is proposing to install inflatable shoulder straps on side facing divans to reduce the potential for head injury in the event of an accident. The inflatable shoulder strap works similarly to an automotive airbag, except that the airbag is integrated with the shoulder strap of the restraint system.

Part 25 states the performance criteria for head injury protection in objective terms. However, none of these criteria are adequate to address the specific issues raised concerning seats with inflatable shoulder straps. The FAA has therefore determined that, in addition to the requirements of part 25, special conditions are needed to address requirements particular to installation of seats with inflatable shoulder straps.

Accordingly, in addition to the passenger injury criteria specified in § 25.785, these special conditions are adopted for Falcon 7X airplanes equipped with inflatable shoulder straps. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

Discussion

From the standpoint of a passenger safety system, the inflatable shoulder strap is unique in that it is both an active and entirely autonomous device. While the automotive industry has good experience with airbags, the conditions of use and reliance on the inflatable shoulder strap as the sole means of injury protection are quite different. In automobile installations, the airbag is a supplemental system and works in conjunction with an upper torso restraint. In addition, the crash event is more definable and of typically shorter duration, which can simplify the activation logic. The airplane operating environment is also quite different from automobiles and includes the potential for greater wear and tear and unanticipated abuse conditions (due to galley loading, passenger baggage, etc.). Airplanes also operate where exposure to high intensity electromagnetic fields could affect the activation system.

The inflatable shoulder strap has two potential advantages over other means of head impact protection. First, it can provide significantly greater protection than would be expected with energy-absorbing pads; and second, it can provide essentially equivalent protection for occupants of all stature. These are significant advantages from a safety standpoint, since such devices will likely provide a level of safety that exceeds the minimum standards of the federal aviation regulations. Conversely, inflatable shoulder straps in general are active systems and must be relied upon to activate properly when needed, as opposed to an energy-absorbing pad or upper torso restraint that is passive and always available. Therefore, the potential advantages must be balanced against this and other potential disadvantages in order to develop standards for this design feature.

The FAA has considered the installation of inflatable shoulder straps to have two primary safety concerns: First, that they perform properly under foreseeable operating conditions, and second, that they do not perform in a manner or at such times as would constitute a hazard to the airplane or occupants. This latter point has the potential to be the more rigorous of the requirements, owing to the active nature of the system.

The inflatable shoulder strap will rely on electronic sensors for signaling and a stored gas canister for inflation. These same devices could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of inadvertent deployment, as well as failure to deploy, must be considered in establishing the reliability of the system. Dassault Aviation must substantiate that the effects of an inadvertent deployment in flight either would not cause injuries to occupants or that such deployment(s) meet the requirement of § 25.1309(b). The effect of an inadvertent deployment on a passenger or crewmember that might be positioned close to the inflatable shoulder strap should also be considered. The person could be either standing or sitting. A minimum reliability level will have to be established for this case, depending upon the consequences, even if the effect on the airplane is negligible.

The potential for an inadvertent deployment could be increased as a result of conditions in service. The installation must take into account wear and tear so that the likelihood of an inadvertent deployment is not increased to an unacceptable level. In this context, an appropriate inspection interval and self-test capability are considered

necessary. Other outside influences are lightning and high intensity radiated fields (HIRF). Existing HIRF special conditions for the Dassault Aviation Model Falcon 7X airplanes, Special Conditions No. 25–346–SC, are applicable. Finally, the inflatable shoulder strap installation should be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture of the pyrotechnic squib.

In order to be an effective safety system, the inflatable shoulder strap must function properly and must not introduce any additional hazards to occupants as a result of its functioning. There are several areas where the inflatable shoulder strap differs from traditional occupant protection systems, and requires special conditions to ensure adequate performance.

Because the inflatable shoulder strap is essentially a single use device, there is the potential that it could deploy under crash conditions that are not sufficiently severe as to require head injury protection from the inflatable shoulder strap. Since an actual crash is frequently composed of a series of impacts before the airplane comes to rest, this could render the inflatable shoulder strap useless if a larger impact follows the initial impact. This situation does not exist with energy absorbing pads or upper torso restraints, which tend to provide continuous protection regardless of severity or number of impacts in a crash event. Therefore, the inflatable shoulder strap installation should provide protection, when it is required, by not expending its protection during a less severe impact. Also, it is possible to have several large impact events during the course of a crash, but there is no requirement for the inflatable shoulder strap to provide protection for multiple impacts.

Since each occupant's restraint system provides protection for that occupant only, the installation must address seats that are unoccupied. It will be necessary to show that the required protection is provided for each occupant regardless of the number of occupied seats, and considering that unoccupied seats may have shoulder straps that are active.

The inflatable shoulder straps should be effective for a wide range of occupants. The FAA has historically considered the range from the fifth percentile female to the ninety-fifth percentile male as the range of occupants that must be taken into account. In this case, the FAA is proposing consideration of a broader range of occupants, due to the nature of the shoulder straps installation and its close proximity to the occupant. In a similar vein, these persons could have assumed the brace position, for those accidents where an impact is anticipated. Test data indicate that occupants in the brace position do not require supplemental protection, and so it would not be necessary to show that the inflatable shoulder straps will enhance the brace position. However, the inflatable shoulder straps must not introduce a hazard in the case of deploying into the seated, braced occupant.

Another area of concern is the use of seats, so equipped, by children whether lap-held, in approved child safety seats, or occupying the seat directly. Similarly, if the seat is occupied by a pregnant woman, the installation should address such usage, either by demonstrating that it will function properly, or by adding appropriate limitation on usage.

Since the inflatable shoulder strap will be electrically powered, there is the possibility that the system could fail due to a separation in the fuselage. Since this system is intended as crash/post-crash protection means, failure to deploy due to fuselage separation is not acceptable. As with emergency lighting, the system should function properly if such a separation occurs at any point in the fuselage.

Since the inflatable shoulder strap is likely to have a large volume displacement, the inflated bag could potentially impede egress of passengers. Since the bag deflates to absorb energy, it is likely that an inflatable shoulder strap would be deflated at the time that persons would be trying to leave their seats. Nonetheless, it is considered appropriate to specify a time interval after which the inflatable shoulder strap may not impede rapid egress. Ten seconds has been chosen as a reasonable time, since this corresponds to the maximum time allowed for an exit to be openable (§ 25.809). In actuality, it is unlikely that an exit would be prepared by a flight attendant this quickly in an accident severe enough to warrant deployment of the inflatable shoulder strap, and the inflatable shoulder strap is expected to deflate much quicker than ten seconds.

Part I of appendix F to part 25 specifies the flammability requirements for interior materials and components. There is no reference to inflatable restraint systems in appendix F, because such devices did not exist at the time the flammability requirements were written. The existing requirements are based on both material types, as well as use, and have been specified in light of the state-of-the-art of materials available to perform a given function. In the absence of a specific reference, the default requirement would be for the type of material used to construct the inflatable restraint, which is a fabric in this case. However, in writing special conditions, the FAA must also consider the use of the material, and whether the default requirement is appropriate. In this case, the specialized function of the inflatable shoulder strap means that highly specialized materials are needed. The standard normally applied to fabrics is a 12-second vertical ignition test. However, materials that meet this standard do not perform adequately as inflatable shoulder straps. Since the safety benefit of the inflatable shoulder strap is significant, the flammability standard appropriate for these devices should not screen out suitable materials, thereby effectively eliminating use of inflatable shoulder straps. The FAA will need to establish a balance between the safety benefit of the inflatable shoulder strap and its flammability performance. At this time, the 2.5-inch per minute horizontal test is considered to provide that balance. As the technology in materials progresses (which is expected), the FAA may change this standard in subsequent special conditions to account for improved materials.

The following special conditions can be characterized as addressing either the safety performance of the system or the system's integrity against inadvertent activation. Because a crash requiring use of the inflatable shoulder strap is a relatively rare event, and because the consequences of an inadvertent activation are potentially quite severe, these latter requirements are probably the more rigorous from a design standpoint.

Finally, it should be noted that these special conditions are applicable to the inflatable shoulder straps as installed. These special conditions are not an installation approval. Therefore, while these special conditions relate to each such system installed, the overall installation approval is a separate finding and must consider the combined effects of all such systems installed.

Applicability

As discussed above, these special conditions are applicable to the Dassault Aviation Model Falcon 7X. Should Dassault Aviation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Dassault Aviation Model Falcon 7X airplanes.

1. Seats with Inflatable Shoulder Straps. It must be shown that the airbag system in the shoulder strap will deploy and provide protection under crash conditions where it is necessary to prevent serious injury. The means of protection must take into consideration a range of stature from a two-year-old child to a ninety-fifth percentile male. The airbag system in the shoulder strap must provide a consistent approach to energy absorption throughout that range of occupants. In addition, the following situations must be considered:

a. The seat occupant is holding an infant.

b. The seat occupant is a child in a child restraint device.

c. The seat occupant is a child not using a child restraint device.

d. The seat occupant is a pregnant woman.

2. The airbag system in the shoulder strap must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly, considering that unoccupied seats may have an active airbag system in the shoulder strap.

3. The design must prevent the airbag system in the shoulder strap from being either incorrectly buckled or incorrectly installed, such that the airbag system in the shoulder strap would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant and will provide the required injury protection.

4. It must be shown that the airbag system in the shoulder strap is not susceptible to inadvertent deployment as a result of wear and tear or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings) and other operating and environmental conditions (vibrations, moisture, etc.) likely to be experienced in service.

5. Deployment of the airbag system in the shoulder strap must not introduce injury mechanisms to the seated occupant or result in injuries that could impede rapid egress. This assessment should include an occupant whose belt is loosely fastened.

6. It must be shown that inadvertent deployment of the airbag system in the shoulder strap, during the most critical part of the flight, will either meet the requirement of § 25.1309(b) or not cause a hazard to the airplane or its occupants.

7. It must be shown that the airbag system in the shoulder strap will not impede rapid egress of occupants 10 seconds after airbag deployment.

8. The airbag system must be protected from lightning and HIRF. The threats to the airplane specified in existing regulations regarding lightning, § 25.1316, and special conditions regarding HIRF, Special Condition No. 25–346–SC, are incorporated by reference for the purpose of measuring lightning and HIRF protection. For the purposes of complying with HIRF requirements, the airbag system in the shoulder strap is considered a ''critical system'' if its deployment could have a hazardous effect on the airplane; otherwise, it is considered an ''essential'' system.

9. The airbag system in the shoulder strap must function properly after loss of normal aircraft electrical power and after a transverse separation of the fuselage at the most critical location. A separation at the location of the airbag system in the shoulder strap does not have to be considered.

10. It must be shown that the airbag system in the shoulder strap will not release hazardous quantities of gas or particulate matter into the cabin.

11. The airbag system in the shoulder strap installation must be protected from the effects of fire such that no hazard to occupants will result.

12. There must be a means for a crewmember to verify the integrity of the airbag system in the shoulder strap activation system prior to each flight, or it must be demonstrated to reliably operate between inspection intervals. The FAA considers the loss of the airbag-system deployment function alone (i.e., independent of the conditional event that requires the airbag system deployment) to be a major failure condition.

13. With regard to § 25.853, the inflatable material may not have an average burn rate of greater than 2.5 inches/minute when tested using the horizontal flammability test defined in part 25, appendix F, part I, paragraph (b)(5).

14. The airbag system in the shoulder strap, once deployed, must not adversely affect the emergency-lighting system (i.e., block floor proximity lights to the extent that the lights no longer meet their intended function).

Issued in Renton, Washington, on March 19, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–7280 Filed 3–26–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1262; Airspace Docket No. 11–ANM–25]

Amendment of Class E Airspace; Lamar, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Lamar Municipal Airport, Lamar, CO. Decommissioning of the Lamar Tactical Air Navigation System (TACAN) has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also adjusts the geographic coordinates of the airport.

DATES: Effective date, 0901 UTC, May 31, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

History

On December 20, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Lamar, CO (76 FR 78864). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace, extending upward from 700 feet above the surface, at Lamar Municipal Airport. Airspace reconfiguration is necessary due to the decommissioning of the Lamar TACAN. Also, the geographic coordinates of the airport are updated to coincide with the FAA's aeronautical database. Controlled airspace is necessary for the safety and management of IFR operations at the airport.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Lamar Municipal Airport, Lamar, CO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Lamar, CO [Amended]

Lamar Municipal Airport, CO
(Lat. 38°04′11″ N., long. 102°41′19″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Lamar Municipal Airport, and within 3.1 miles each side of the Lamar Municipal Airport 001° bearing extending from the 6.8-mile radius to 16.5 miles north of the airport; that airspace extending upward from 1,200 feet above the surface beginning on the Colorado/Kansas state boundary at lat. 38°34′00″ N.; thence along the Colorado/Kansas state boundary to lat. 37°11′00″ N.; to lat. 37°11′00″ N., long. 103°24′00″ W.; to lat. 38°34′00″ N., long. 103°24′00″ W.; thence to the point of beginning.

Issued in Seattle, Washington, on March 19, 2012.

Vered Lovett,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2012–7231 Filed 3–26–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0726; Airspace Docket No. 11–AEA–18]

Establishment of Class E Airspace; Piseco, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Piseco, NY, to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures at Piseco Airport. This action enhances the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also makes a minor adjustment to the geographic coordinates of the airport.

DATES: Effective 0901 UTC, May 31, 2012. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P. O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On December 13, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace 700 feet above the surface, at Piseco, NY (76 FR 77451). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, the FAA found that the geographic coordinates needed to be adjusted; this rule makes that adjustment. Class E airspace designations are published in paragraph

6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establish Class E airspace extending upward from 700 feet above the surface to support new standard instrument approach procedures developed at Piseco Airport, Piseco, NY. This action also adjusts the geographic coordinates of the airport to be in concert with the FAAs aeronautical database. This enhances the safety and management of IFR operations at the airport. Except for the changes noted above, this action is the same as that proposed in the NPRM.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the 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 Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Piseco Airport, Piseco, NY.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AEA NY E5 Piseco, NY [New]

Piseco Airport, NY
(Lat. 43°27′12″ N., long. 74°30′54″ W.)

That airspace extending upward from 700 feet above the surface within a 12.3-mile radius of Piseco Airport.

Issued in College Park, Georgia, on March 16, 2012.

Barry A. Knight,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–7230 Filed 3–26–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2012–0174; Airspace Docket No. 11–AEA–3]

RIN 2120–AA66

Amendment of Restricted Areas R–5801 and R–5803; Chambersburg, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This action makes a minor editorial change to the time of designation for restricted areas R–5801 and R–5803, Chambersburg, PA, to remove the abbreviation ''EST.'' This amendment does not change the dimensions of, or activities conducted within, the restricted areas.

DATES: Effective date 0901 UTC, May 31, 2012.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The time of designation for R–5801 and R–5803 currently reads ''0800 to 1600 EST, Monday–Friday.'' Since these restricted areas lie completely within the Eastern Time zone, it is unnecessary to specify ''EST'' in the descriptions. The hours 0800 to 1600 are in effect year round regardless of time of year. The use of ''EST'' in the current description leads to confusion about the time of designation during that part of the year when daylight saving time is in effect. The intended time of designation for the restricted areas is 0800–1600 local time during both standard time and daylight time periods.

The Rule

This action amends Title 14, Code of Federal Regulations (14 CFR) part 73 to remove ''EST'' from the time of designation in the descriptions of restricted areas R–5801 and R–5803, Chambersburg, PA. The time of designation is amended to read ''0800 to 1600 local time, Monday–Friday.'' This change does not alter the current usage of the restricted areas.

Accordingly, since this action is an administrative change, and does not alter the dimensions or utilization of the restricted areas, I find that notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

Section 73.58 of Title 14 CFR part 73 was republished in FAA Order 7400.8U, effective February 16, 2012.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant

economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the 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 Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends airspace descriptions to keep them current.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, paragraph 311d. This action updates the technical description of special use airspace that does not alter the dimensions, altitudes, or use of the airspace. It is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.58 [Amended]

■ 2. Section 73.58 is amended as follows:

* * * * *

R–5801 Chambersburg, PA [Amended]

By removing the current time of designation and substituting the following:

Time of designation. 0800 to 1600 local time, Monday–Friday.

* * * * *

R–5803 Chambersburg, PA [Amended]

By removing the current time of designation and substituting the following:

Time of designation. 0800 to 1600 local time, Monday–Friday.

Issued in Washington, DC, on March 14, 2012.

Gary A. Norek,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2012–7311 Filed 3–26–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0079]

Drawbridge Operation Regulation; Trent River, New Bern, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the US 70 Alfred Cunningham Bridge across the Trent River, mile 0.0, at New Bern, NC. The deviation is necessary to accommodate cyclists in the ''Cyclist Goin Coastal'' charity event. This deviation allows the bridge to remain in the closed position for one-half hour to ensure safe passage for the cyclists.

DATES: This deviation is effective from 8 a.m. through 8:30 a.m. on May 5, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0079 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0079 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lindsey Middleton, Coast Guard; telephone 757–398–6629, email *Lindsey.R.Middleton@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The NC Coastal Land Trust ''Cyclist Goin Coastal'' Ride Committee on behalf of the North Carolina Department of Transportation has requested a temporary deviation from the current operating regulation of the US 70 Alfred Cunningham Bascule Bridge across the Trent River, mile 0.0, at New Bern, NC. The route of the cycle ride crosses the bridge and the requested deviation is to accommodate a safe and efficient passage across the bridge for the cyclists. To facilitate this event, the draw of the bridge will be maintained in the closed-to-navigation position for one-half hour; from 8 a.m. until 8:30 a.m. on Saturday, May 5, 2012.

The vertical clearance for this bridge in the closed position is 14 feet at Mean High Water and unlimited in the open position. The operating regulations are set forth in 33 CFR 117.843(a) which states that during this time period the bridge shall open on signal.

Vessels that can pass through the bridge in the closed position may do so at any time. The Coast Guard will inform the waterway users of the closure through our Local Notice to Mariners and other appropriate local media to minimize any impact caused by the temporary deviation. The bridge will be able to open for emergencies. Most vessel traffic utilizing this bridge consists of recreational boaters. This closure is for a small duration of time, therefore, only a small number of boaters may be affected by the temporary closure. There are no alternate routes to the Neuse River from the Trent River.

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

Dated: February 29, 2012.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2012–7128 Filed 3–26–12; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 10–51; FCC 11–54]

Structure and Practices of the Video Relay Service Program

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission (FCC) is correcting a final rule that appeared in the **Federal Register** of September 26, 2011. The document announces the effective date of rules containing information collection requirements approved by the Office of Management and Budget that were adopted by the FCC to prevent fraud, waste, and abuse in the Video Relay Service (VRS) industry.

DATES: Effective September 26, 2011.

FOR FURTHER INFORMATION CONTACT: Gregory Hlibok, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 559–5158, or email *Gregory.Hlibok@fcc.gov.*

SUPPLEMENTARY INFORMATION: This document makes the following corrections to the final rule published September 26, 2011, 76 FR 59269:

On page 59270, column 2, correct paragraph (c) to read as follows:

(c) *Data Filed with the Fund Administrator to Support Payment Claims.* TRS providers shall provide the following data associated with each TRS call for which a TRS provider seeks compensation in its filing with the Fund Administrator: (1) The call record ID sequence; (2) CA ID number; (3) session start and end times; (4) conversation start and end times; (5) incoming telephone number and IP address (if call originates with an IP-based device) at the time of call; (6) outbound telephone number and IP address (if call terminates with an IP-based device) at the time of call; (7) total conversation minutes; (8) total session minutes; (9) the call center (by assigned center ID number) that handles the call; and (10) the URL address through which the call was initiated.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–7245 Filed 3–26–12; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1852

RIN 2700–AD70

Award Fee for Service and End-Item Contracts

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA has adopted, without change, a final rule amending the NASA FAR Supplement (NFS) to update the Award Fee for Service Contracts clause (NFS 1852.216–76) to clarify that the amount of award fee held in reserve, if any, shall not exceed $100,000 for the contract, and add similar language to the Award Fee for End-Item Contracts clause (NFS 1852.216–77) to allow the contracting officer to withhold fee payments, at a not-to-exceed amount of $100,000 for the contract, in reserve to protect the Government's interests relative to an orderly and timely closeout of the contract.

DATES: *Effective:* April 26, 2012.

FOR FURTHER INFORMATION CONTACT: Bill Roets, NASA, Office of Procurement, Contract Management Division, Room 5G86; (202) 358–4483; email: *william.roets-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published on September 15, 2011 (76 FR 57014) updating NFS clause 52.216–76 to clarify that the amount of withheld award fee shall not exceed $100,000 for the contract revising paragraph (d) of this clause. As currently written, the clause specified a not-to-exceed amount of 15 percent of the contract's potential award fee, and on large multi-million dollar procurements, this reserve could total millions of dollars which would be excessive for the intended purpose of this reserve. By capping this reserve at $100,000, NASA will set the appropriate maximum dollar amount for this potential reserve and will align this clause with similar language in FAR clauses 52.216–8, Fixed-Fee, and 52.216–10, Incentive Fee. Similar language relative to withholding a reserve amount of fee, not to exceed $100,000, to protect the Government's interests relative to an orderly and timely closeout of the contract, is also being added to the Award Fee for End Item Contracts clause (NFS 1852.216–77). NASA received no comments on the proposed rule and has adopted the proposed rule as a final rule without change.

B. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, at 5 U.S.C. 601, et seq., because it merely updates, for clarification purposes, the maximum amount of award fee that can be withheld on a contract which will provide a benefit to all entities both large and small. In addition, award fee contracts are largely the province of large businesses with large dollar contracts and the changes promulgated in this final rule do not directly affect the current processes of Federal contractors. No comments from small entities were submitted in reference to the Regulatory Flexibility Act request under the proposed rule.

D. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L., 104–13) does not apply because this final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 1852

Government procurement.

Sheryl Goddard,

Acting Assistant Administrator for Procurement.

Accordingly, 48 CFR part 1852 is amended as follows:

■ 1. The authority citation for 48 CFR part 1852 continues to read as follows:

Authority: 42 U.S.C. 2455(a), 2473(c)(1).

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 2. Section 1852.216–76 is revised to read as follows:

1852.216–76 Award fee for service contracts.

As prescribed in 1816.406–70(a), insert the following clause:

AWARD FEE FOR SERVICE CONTRACTS (APR 2012)

(a) The contractor can earn award fee from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216–85, ''Estimated Cost and Award Fee'' in this contract.

(b) Beginning 6* months after the effective date of this contract, the Government shall evaluate the Contractor's performance every 6* months to determine the amount of award fee earned by the contractor during the period. The Contractor may submit a self-evaluation of performance for each evaluation period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government's Fee Determination Official (FDO) will determine the award fee amounts based on the Contractor's performance in accordance with [identify performance evaluation plan]. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c) The Government will advise the Contractor in writing of the evaluation results. The [insert payment office] will make payment based on [Insert method of authorizing award fee payment, e.g., issuance of unilateral modification by contracting officer].

(d) The Contracting Officer may direct the withholding of earned award fee payments until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest relative to an orderly and timely closeout of the contract. This reserve shall not exceed 15 percent of the contract's total potential award fee or $100,000, whichever is less.

(e) The amount of award fee which can be awarded in each evaluation period is limited to the amounts set forth at [identify location of award fee amounts]. Award fee which is not earned in an evaluation period cannot be reallocated to future evaluation periods.

(f)(1) Provisional award fee payments [insert ''will'' or ''will not'', as applicable] be made under this contract pending the determination of the amount of fee earned for an evaluation period. If applicable, provisional award fee payments will be made to the Contractor on a [insert the frequency of provisional payments (not more often than monthly)] basis. The total amount of award fee available in an evaluation period that will be provisionally paid is the lesser of [Insert a percent not to exceed 80 percent] or the prior period's evaluation score.

(2) Provisional award fee payments will be superseded by the final award fee evaluation for that period. If provisional payments exceed the final evaluation score, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer.

(3) If the Contracting Officer determines that the Contractor will not achieve a level of performance commensurate with the provisional rate, payment of provisional award fee will be discontinued or reduced in such amounts as the Contracting Officer deems appropriate. The Contracting Officer will notify the Contractor in writing if it is determined that such discontinuance or reduction is appropriate.

(4) Provisional award fee payments [insert ''will'' or ''will not'', as appropriate] be made prior to the first award fee determination by the Government.

(g) Award fee determinations are unilateral decisions made solely at the discretion of the Government.

* [A period of time greater or lesser than 6 months may be substituted in accordance with 1816.405–272(a).]

(End of clause)

■ 3. Section 1852.216–77 is revised to read as follows:

1852.216–77 Award fee for end item contracts.

As prescribed in 1816.406–70(b), insert the following clause:

AWARD FEE FOR END ITEM CONTRACTS (APR 2012)

(a) The contractor can earn award fee, or base fee, if any, from a minimum of zero dollars to the maximum stated in NASA FAR Supplement clause 1852.216–85, ''Estimated Cost and Award Fee'' in this contract. All award fee evaluations, with the exception of the last evaluation, will be interim evaluations. At the last evaluation, which is final, the Contractor's performance for the entire contract will be evaluated to determine total earned award fee. No award fee or base fee will be paid to the Contractor if the final award fee evaluation is ''poor/unsatisfactory.''

(b) Beginning 6* months after the effective date of this contract, the Government will evaluate the Contractor's interim performance every 6* months to monitor Contractor performance prior to contract completion and to provide feedback to the Contractor. The evaluation will be performed in accordance with [identify performance evaluation plan] to this contract. The Contractor may submit a self-evaluation of performance for each period under consideration. These self-evaluations will be considered by the Government in its evaluation. The Government will advise the Contractor in writing of the evaluation results. The plan may be revised unilaterally by the Government prior to the beginning of any rating period to redirect emphasis.

(c)(1) Base fee, if applicable, will be paid in [Insert ''monthly'', or less frequent period] installments based on the percent of completion of the work as determined by the Contracting Officer.

(2) Interim award fee payments will be made to the Contractor based on each interim evaluation. The amount of the interim award fee payment is limited to the lesser of the interim evaluation score or 80 percent of the fee allocated to that period less any provisional payments made during the period. All interim award fee payments will be superseded by the final award fee determination.

(3) Provisional award fee payments will [insert ''not'' if applicable] be made under this contract pending each interim evaluation. If applicable, provisional award fee payments will be made to the Contractor on a [*insert the frequency of provisional payments (not more often than monthly*) basis. The amount of award fee which will be provisionally paid in each evaluation period is limited to [Insert a percent not to exceed 80 percent] of the prior interim evaluation score (see [*insert applicable cite*]). Provisional award fee payments made each evaluation period will be superseded by the interim award fee evaluation for that period. If provisional payments made exceed the interim evaluation score, the Contractor will either credit the next payment voucher for the amount of such overpayment or refund the difference to the Government, as directed by the Contracting Officer. If the Government determines that (i) the total amount of provisional fee payments will apparently *substantially* exceed the anticipated final evaluation score, or (ii) the prior interim evaluation is ''poor/unsatisfactory,'' the Contracting Officer will direct the suspension or reduction of the future payments and/or request a prompt refund of excess payments as appropriate. Written notification of the determination will be provided to the Contractor with a copy to the Deputy Chief Financial Officer (Finance).

(4) All interim (and provisional, if applicable) fee payments will be superseded by the fee determination made in the final award fee evaluation. The Government will then pay the Contractor, or the Contractor will refund to the Government the difference between the final award fee determination and the cumulative interim (and provisional, if applicable) fee payments. If the final award fee evaluation is ''poor/unsatisfactory'', any base fee paid will be refunded to the Government.

(5) Payment of base fee, if applicable, will be made based on submission of an invoice by the Contractor. Payment of award fee will be made by the [insert payment office] based on [Insert method of making award fee payment, e.g., issuance of a unilateral modification by the Contracting Officer].

(d) The Contracting Officer may direct the withholding of interim award fee payments until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest relative to an orderly and timely closeout of the contract. This reserve shall not exceed 15 percent of the contracts total potential award fee or $100,000, whichever is less.

(e) Award fee determinations are unilateral decisions made solely at the discretion of the Government.

* [A period of time greater or lesser than 6 months may be substituted in accordance with 1816.405–272(a).]

(End of clause)

[FR Doc. 2012–5797 Filed 3–26–12; 8:45 am]

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Proposed Rules

Federal Register
Vol. 77, No. 59
Tuesday, March 27, 2012

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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AD92

Assessments, Large Bank Pricing

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The FDIC proposes to amend its regulations to revise some of the definitions used to determine assessment rates for large and highly complex insured depository institutions. The FDIC believes these proposed amendments will result in more consistent reporting, better reflect risk to the FDIC, significantly reduce reporting burden, and satisfy many concerns voiced by the banking industry.

DATES: Comments must be received on or before May 29, 2012.

ADDRESSES: You may submit comments on the notice of proposed rulemaking, identified by RIN number and the words ''Assessments, Large Bank Pricing Definition Revisions Notice of Proposed Rulemaking,'' by any of the following methods:

- *Agency Web Site: http://www.FDIC.gov/regulations/laws/federal/propose.html*. Follow the instructions for submitting comments on the Agency Web Site.
- *Email: Comments@FDIC.gov*. Include the RIN number in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name and RIN for this rulemaking. Comments will be posted to the extent practicable and, in some instances, the FDIC may post summaries of categories of comments, with the comments themselves available in the FDIC's reading room. Comments will be posted at: *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided with the comment.

FOR FURTHER INFORMATION CONTACT: Patrick Mitchell, Chief, Large Bank Pricing Section, Division of Insurance and Research, (202) 898–3943; Brenda Bruno, Senior Financial Analyst, Division of Insurance and Research, (630) 241–0359 x 8312; Christopher Bellotto, Counsel, Legal Division, (202) 898–3801; Sheikha Kapoor, Counsel, Legal Division, (202) 898–3960.

SUPPLEMENTARY INFORMATION:

I. Background

Legal Authority

The Federal Deposit Insurance Act (the FDI Act) requires that the deposit insurance assessment system be risk-based.[1] It defines a risk-based system as one based on an institution's probability of causing a loss to the Deposit Insurance Fund (the DIF), taking into account the composition and concentration of the institution's assets and liabilities and any other factors that the FDIC determines are relevant, the likely amount of any such loss, and the revenue needs of the DIF. The FDI Act allows the FDIC to ''establish separate risk-based assessment systems for large and small members of the Deposit Insurance Fund.'' [2]

Large Bank Pricing Rule

On February 7, 2011, the FDIC Board adopted a final rule that amended its assessment regulations, by, among other things, establishing a new methodology for determining assessment rates for large and highly complex institutions (the February rule).[3] [4] The February rule eliminated risk categories for large institutions and combined CAMELS ratings and certain forward-looking financial ratios into one of two scorecards, one for highly-complex institutions and another for all other large institutions. The scorecards calculate a total score for each institution.[5] The total score is then converted to the institution's initial base assessment rate, which, after certain adjustments, results in the institution's total assessment rate.[6] To calculate the amount of the institution's quarterly assessment, the total base assessment rate is multiplied by the institution's assessment base and the result divided by four.

One of the financial ratios used in the scorecards is the ratio of higher-risk assets to Tier 1 capital and reserves.[7] Higher-risk assets are defined as the sum of construction and land development (C&D) loans, leveraged loans, subprime loans, and nontraditional mortgage loans. The February rule used existing interagency

[1] Section 7(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)).

[2] Section 7(b)(1)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(D)).

[3] Assessments, Large Bank Pricing, 76 FR 10672 (February 25, 2011) (to be codified at 12 CFR 327.9).

[4] A large institution is defined as an insured depository institution: (1) That had assets of $10 billion or more as of December 31, 2006 (unless, by reporting assets of less than $10 billion for four consecutive quarters since then, it has become a small institution); or (2) that had assets of less than $10 billion as of December 31, 2006, but has since had $10 billion or more in total assets for at least four consecutive quarters, whether or not the institution is new. A ''highly complex institution'' is defined as: (1) An insured depository institution (excluding a credit card bank) that has had $50 billion or more in total assets for at least four consecutive quarters and that either is controlled by a U.S. parent holding company that has had $500 billion or more in total assets for four consecutive quarters, or is controlled by one or more intermediate U.S. parent holding companies that are controlled by a U.S. holding company that has had $500 billion or more in assets for four consecutive quarters, and (2) a processing bank or trust company. A processing bank or trust company is an insured depository institution whose last three years' non-lending interest income, fiduciary revenues, and investment banking fees, combined, exceed 50 percent of total revenues (and its last three years fiduciary revenues are non-zero), whose total fiduciary assets total $500 billion or more and whose total assets for at least four consecutive quarters have been $10 billion or more.

[5] A large or highly-complex institution's total score may also be adjusted by the large bank adjustment. 76 FR 10672, 10714 (February 25, 2011) (to be codified at 12 CFR 327.9(b)(3)).

[6] An institution's initial base assessment rate can be adjusted by the unsecured debt adjustment, the depository institution debt adjustment, and the brokered deposit adjustment. 76 FR 10672, 10715 (February 25, 2011) (to be codified at 12 CFR 327.9(d)).

[7] Higher-risk assets are used to calculate the concentration score, which is part of both the large bank scorecard and the highly complex institution scorecard. For large institutions, the concentration score is defined as the higher of: (a) The higher-risk assets to Tier 1 capital and reserves score or (b) the growth-adjusted portfolio concentrations score. For highly complex institutions, it is defined as the higher of: (a) The higher-risk assets to Tier 1 capital and reserves score or (b) the largest or top 20 counterparty exposures to Tier 1 capital and reserves score.

guidance to define leveraged loans, nontraditional mortgage loans, and subprime loans but refined the definitions to minimize reporting discrepancies. In arriving at these definitions, the FDIC took into account comments that were received in response to the two notices of proposed rulemaking that led to adoption of the February rule.[8]

While institutions already reported C&D loan data in their quarterly reports of condition and income (the Call Reports and the Thrift Financial Reports or TFRs), they did not report the needed data for the other loans, thus requiring new line items in these reports. Therefore, on March 16, 2011, the Office of the Comptroller of the Currency, the Board of the Federal Reserve System, the Office of Thrift Supervision, the Treasury, and the FDIC (collectively, the agencies) published a Paperwork Reduction Act of 1995 (PRA) notice under normal PRA clearance procedures requesting comment on proposed revisions to the Call Reports, the TFRs, and the Federal Financial Institutions Examination Council (FFIEC) 002/002S reports that would provide the data needed by the FDIC to implement the February 2011 rule beginning with the June 30, 2011, report date (March PRA notice).[9]

The agencies received 19 comments in response to the March PRA notice. Of these 19 comments, 17 addressed the new items for subprime and leveraged loans added to Call Reports and TFRs. The commenters stated that institutions generally do not maintain data on these loans consistent with the definitions used in the February rule and would be unable to report the required data by the June 30, 2011, report date. These data availability concerns had not been raised during the rulemaking process leading up to the February rule.[10]

As a consequence of this unexpected difficulty, the agencies applied to the Office of Management and Budget (OMB) under emergency clearance procedures to allow institutions to identify and report subprime and leveraged loans and securitizations originated or purchased prior to October 1, 2011, using either their existing internal methodologies or the definitions contained in existing supervisory guidance. The reporting options are referred to as ''transition guidance'' and are outlined in the General Instructions for Schedule RC–O of the Reports of Condition and Income, Memorandum Items 6 through 15 for leveraged loans and subprime loans. Because the assessment-related reporting revisions needed to remain in effect beyond the limited approval period associated with an emergency clearance request, the agencies, under the auspices of the FFIEC, submitted the reporting revisions under normal PRA clearance procedures and requested public comment on July 27, 2011 (July PRA notice).[11]

The agencies collectively received four comments in response to the July PRA notice before the comment period closed on September 26, 2011. The commenters recommended extending the transition guidance for reporting subprime and leveraged loans until more workable and accurate definitions were developed. The commenters requested that the definitions of subprime and leveraged loans be revised because they do not effectively measure the risk that the FDIC intended to capture. Rather, commenters maintained that the definitions would capture loans that are not subprime or leveraged (i.e., are not higher-risk assets) and require burdensome reporting that could result in inconsistencies among banks. A joint comment letter from three industry trade groups also recommended that the definition of nontraditional mortgage loans be revised.

On September 28, 2011, the FDIC informed large and highly complex institutions via email (followed by changes to Call Report instructions) that the deadline for the transition guidance would be extended to April 1, 2012, and that the FDIC would review the definitions of subprime and leveraged loans to determine whether changes to the definitions would alleviate commenters' concerns without sacrificing accuracy in risk determination for deposit insurance pricing purposes.

As part of its review, the FDIC considered all comments related to the higher-risk asset definitions that were submitted in response to the March and July PRA notices. The FDIC also engaged in extensive discussions with the industry and industry trade groups over the last few months to better understand their concerns and to solicit potential solutions to these concerns.

II. Assessment System for Large and Highly Complex Institutions

The FDIC proposes amendments to the assessment system for large and highly complex institutions that would: (1) Revise the definitions of certain higher risk assets, specifically leveraged loans, which would be renamed ''higher-risk C&I loans and securities,'' and subprime consumer loans, which would be renamed ''higher-risk consumer loans and securities''; (2) clarify the timing of classifying an asset as higher risk; (3) clarify the way securitizations (including those that meet the definition of nontraditional mortgage loans) are to be identified; and (4) further define terms that are used in the large bank pricing rule. The names of the categories of assets included in the higher-risk assets to Tier 1 capital and reserves ratio have been changed to avoid confusion between the definitions used in the deposit insurance assessment regulations and the terms that generally are used within the industry and in other regulatory guidance. The definitions of C&D loans would not be amended under the NPR and these loans would continue to be defined as in the February rule. Nontraditional mortgage loans would continue to be defined as in the February rule, but the NPR clarifies how securitizations of nontraditional mortgage loans would be identified under the definition. The FDIC believes that the proposed amendments would result in more consistent reporting, better reflect risk to the FDIC, significantly reduce reporting burden, and satisfy many of the concerns voiced by the industry after adoption of the February 2011 rule.

The proposed amendments would be effective on October 1, 2012, predicated on changes to the Call Report. The effective date is discussed in detail in Section F below.

A. Higher-Risk Assets

The FDIC uses the amount of an institution's higher-risk assets to calculate the institution's concentration score and total score. The concentration measure captures the institution's

[8] 75 FR 23516 (May 3, 2010); 75 FR 72612 (November 24, 2010).

[9] 76 FR 14460 (March 16, 2011).

[10] In response to the November 2010 NPR on the revised large institution assessment system, the FDIC received a number of comments recommending changes to the definitions of subprime and leveraged loans, which the FDIC addressed in its February rule amending its assessment regulations. For example, several commenters to the November 2010 NPR stated that regular (quarterly) updating of data to evaluate loans for subprime or leveraged status would be burdensome and costly and, for certain types of retail loans, would not be possible because existing loan agreements do not require borrowers to routinely provide updated financial information. In response to these comments, the FDIC's February rule stated that large institutions should evaluate loans for subprime or leveraged status upon origination, refinance, or renewal. However, no comments were received on the November 2010 NPR indicating that large institutions would be unable to identify and report subprime or leveraged loans in accordance with the final rule's definitions in their Call Reports and TFRs beginning as of June 30, 2011. The data availability concerns were first expressed in comments on the PRA notice.

[11] 76 FR 44987 (July 27, 2011).

lending (and securities owned) in higher-risk areas; concentrations in these higher-risk assets contributed to the failure of some institutions during the recent financial crisis and economic downturn.

Higher-Risk C&I Loans and Securities

Under the proposal, higher-risk commercial and industrial (C&I) loans and securities would include:

• Any commercial loan (funded or unfunded, including irrevocable and revocable commitments) owed by a borrower to the evaluating depository institution with an original amount greater than $5 million if the conditions specified in (a) or (b) below are met as of origination, or, if the loan has been refinanced, as of refinance, and the loan does not meet the asset based lending (ABL) exclusion or the floor plan line of credit exclusion (discussed in Appendix C).

(a)(i) The purpose of any of the borrower's debt (whether owed to the evaluating insured depository institution or another lender) that was incurred within the previous seven years was to finance a buyout, acquisition or capital distribution and such debt was material;[12] [13] and

(ii) The ratio of the borrower's total debt to trailing twelve-month EBITDA (*i.e.,* operating leverage ratio) is greater than 4 or the ratio of the borrower's senior debt to trailing twelve-month EBITDA (*i.e.,* operating leverage ratio) is greater than 3; [14] or

(b) Any of the borrower's debt (whether owed to the evaluating institution or another lender) is designated as a highly leveraged transaction (HLT) by a syndication agent.

• All securities held by the evaluating institution that are issued by a commercial borrower, if the conditions specified in (a) or (b) above are met, except securities classified as trading book; and

• All securitizations held by the evaluating institution that are more than 50 percent collateralized by commercial loans or securities that would meet the higher-risk C&I loans and securities definition if directly held by the evaluating institution, except securities classified as trading book.

The definition of a higher-risk C&I loan and security would exclude the maximum amount that is recoverable from the U.S. government, its agencies, or government-sponsored agencies under guarantee or insurance provisions, and loans that are fully secured by cash collateral.[15]

An institution would be required to use information reasonably available to a sophisticated investor in reasonably determining whether a securitization meets the 50 percent threshold.[16] Information reasonably available to a sophisticated investor should include, but is not limited to, offering memorandums, indentures, trustee reports, and requests for information from servicers, collateral managers, issuers, trustees, or similar third parties. When determining whether a revolving trust or similar securitization would meet the threshold, an institution could use established criteria, model portfolios, or limitations published in the offering memorandum, indenture, trustee report or similar documents.

Sufficient information necessary for an institution to make a definitive determination may not, in every case, be reasonably available to the institution as a sophisticated investor. In such a case, the institution may exercise its judgment in making the determination. Nevertheless, the FDIC would retain the right to review and audit for compliance with the rule any determination that a securitization does not meet the 50 percent threshold.

In cases where a securitization is required to be consolidated on the balance sheet as a result of SFAS 166 and SFAS 167, and a large institution or highly complex institution has access to the necessary information, an institution may evaluate individual loans in the securitization on a loan-by-loan basis. Any loan within the securitization that meets the definition of a higher-risk asset would be reported as a higher-risk asset and any loan within the securitization that does not meet the definition of a higher-risk asset would not be reported as such. When making this evaluation, the institution would have to follow the transition guidance described in Appendix C, Section C. Once an institution evaluated a securitization for higher-risk asset designation on a loan-by-loan basis, it would have to continue to evaluate all securitizations for which it has the required information in a similar manner (*i.e.,* on a loan-by-loan basis). For securitizations for which the institution does not have access to information on a loan-by-loan basis, the institution would be required to determine whether the securitization meets the 50 percent threshold as described previously for other securitizations.

When an institution acquires a C&I loan or security, it would have to determine whether the loan or security meets the definition of a higher-risk C&I loan or security using the origination criteria and analysis performed by the original lender. If this information were unavailable, however, the institution would have to obtain recent, refreshed data from the borrower or other appropriate third-party.[17]

Appendix C provides detailed definitions of many of the terms used in the foregoing definition.

In arriving at its proposal, the FDIC carefully reviewed the comments submitted in response to the March and July PRA notices on the leveraged loan definition contained in the February rule. Of the 19 respondents commenting on the March PRA notice, 17 raised concerns over the leveraged loan definition; 6 of the 8 respondents to the July PRA notice raised such concerns. Further, as the FDIC noted in the public comment file for the July PRA notice,

[12] For purposes of this definition, the ''purpose of the borrower's debt'' is determined at the time the debt was incurred by the borrower. An institution would be required to determine if the borrower has incurred any debt in the last seven years that meets the purpose test.

[13] Following are definitions of some of the terms used under the proposed rule:

1. Acquisition means the purchase by the borrower of any equity interest in another company or the purchase of any of the assets and liabilities of another company.

2. Buyout for purposes of calculating higher-risk C&I assets means the issuance of debt to finance the purchase or repurchase by the borrower of the borrower's outstanding equity. A buyout could include, but is not limited to, an equity buyout or funding of an Employee Stock Ownership Plan (ESOP).

3. Capital distribution means that the borrower incurs debt to finance a dividend payment or to finance other transactions designed to enhance shareholder value, such as repurchase of stock.

4. Material means resulting in a 20 percent or greater increase anytime within 12 months in the total funded debt of the borrower (including all funded debt assumed, created, or refinanced). Debt is also material if, before the debt was incurred, the borrower had no funded debt.

[14] EBITDA is defined as earnings before interest, taxes, depreciation, and amortization.

[15] In order to exclude a loan based on cash collateral, the cash would be required to be in the form of a savings or time deposit held by the insured depository institution. The insured depository institution would be required to have in place a signed collateral assignment of the deposit account, which is irrevocable for the remaining term of the loan or commitment, and the insured depository institution would be required to place a hold on the deposit account that alerts the institution's employees to an attempted withdrawal. For the exclusion to apply to a revolving line of credit, the cash collateral would be required to be equal to or greater than the amount of the total loan commitment (the aggregate funded and unfunded balance of the loan).

[16] A securitization would be as defined in Appendix A, Section II(B)(16) of Part 325 of the FDIC's Rules and Regulations, as it may be amended from time to time.

[17] Somewhat more stringent requirements would apply when an institution acquires loans or securities from another entity on a recurring or programmatic basis.

the FDIC met with representatives of four industry trade groups and twice with large and highly complex institutions prior to the close of the comment period on the PRA notice.

Three industry trade groups commented on the July PRA notice that the minimum size for leveraged loans included in the February rule ($1 million or higher) is too low since it would capture a large number of small business loans that are not normally considered leveraged. These trade groups commented that the $1 million level overstates leveraged exposures and creates a significant reporting burden, since banks do not generally gather the data required to make a leveraged loan determination for these smaller loans. The commenters further noted that loans under $5 million are typically characterized by additional risk-reducing requirements, such as borrower's guarantees and additional collateral. When these risk-reducing mitigants are prevalent, relying solely on the debt-to-EBITDA test could be a less accurate measure of the risk of these borrowers.

The proposal would increase the threshold level to $5 million. The increased threshold would result in better identification of higher-risk C&I loans and would also reduce the reporting burden.

In response to the July PRA Notice, three banking industry trade groups in a joint letter to the FDIC stated that the definition of leveraged loans used in the February rule does not capture risk as intended and is not a reliable measure of a leveraged loan. They maintained that an institution's debt-to-EBITDA ratio is not, by itself, a reliable indicator of risk, particularly if the loans are asset based or are to companies or industries that traditionally have higher leverage levels. They added that the definition of leveraged loans in the February rule captures such a large portion of an institution's loan portfolio that it does not provide a meaningful differentiation of risk among institutions and creates a reporting burden. The trade groups suggested that considering the purpose of the loan in conjunction with the borrower's operating leverage ratio would result in more accurate identification of risk.[18]

The proposed definition would combine a test of the borrower's operating leverage ratio with a purpose test, namely, that if the purpose of any of the borrower's debt (whether owed to the evaluating insured depository institution or another lender) was to finance a buyout, acquisition, or capital distribution, and that debt was material, a C&I loan or security to that borrower would be classified as higher risk. The purpose of the debt would help identify risk to the FDIC and reflect the method used internally by most banks to identify higher-risk loans. The purpose test would identify those borrowers with certain higher-risk characteristics, such as a heavy reliance on either enterprise value or improvement in the borrower's operating efficiencies.[19]

The industry suggested in a comment letter to the July PRA Notice and in subsequent discussions that banks should look back to the original purpose of debt only if the debt was originally incurred during the previous five years. Under the proposal, however, banks would have to look back to the original purpose of any of the borrower's debt incurred during the previous seven years. During the most recent buyout boom of the mid to late 2000s, a seven-year maturity was often the longest dated maturity for loans that facilitated a leveraged buyout. Under the proposal, where the purpose test is met, loans originated in 2007 (near the end of the leveraged buyout boom) to a borrower that remains above the proposed debt-to-EBITDA ratio thresholds would continue to be classified as higher-risk assets, even when they are refinanced; loans that are refinanced from the same time period but where the borrower has de-levered through either EBITDA growth or debt repayment would not be defined as higher-risk under the proposal.

Under the proposal, debt to finance a buyout, acquisition, or capital distribution would also have to be material. Such debt would be material if it resulted in a 20 percent or greater increase anytime within 12 months in the total funded debt of the borrower.[20] During discussions with the industry, bankers have suggested that total funded debt should have to increase by 50 percent or more to be considered a material buyout, acquisition, or capital distribution. Under the proposal, only a 20 percent increase is required. A 20 percent increase would be high enough to ensure that the FDIC does not capture transactions that do not materially increase the risk profile of the borrower, but low enough to capture transactions such as capital distributions that benefit the borrower's shareholders while increasing the risk to the lending institutions.

The joint comment letter to the July PRA Notice also noted that collateral was not appropriately considered in the leveraged loan definition included in the February rule. The commenters stated that loans would be classified as leveraged even though they had strong collateral backing them, which should result in significantly lower loss rates than loans that are dependent primarily on the enterprise value of a highly-leveraged company. Examples of the loans commenters thought should be excluded from the leveraged loan definition were asset-based loans and dealer floor plan loans.

After considering the comments, the proposed rule would exclude certain well-collateralized asset-based loans and floor plan loans from the definition of higher-risk C&I loans and securities. Because these loans carry significant operational risk, the exclusions would apply only to loans that are well secured by self-liquidating collateral (i.e., accounts receivable and inventory) and only when the institution can demonstrate that it has a history of strong risk management and internal controls over these loans. Excluding loans under these conditions should result in better differentiation of credit risk among institutions and should reduce reporting burden.

Under the February rule, higher-risk assets included securitizations where more than 50 percent of the assets backing the securitization meet the criteria for leveraged loans. In their joint comment letter, three industry trade groups stated that the reporting criteria for securitizations in the February rule is problematic given the challenges in evaluating individual loans in the securitization given the lack of standardized disclosure requirements that align with the FDIC's definition of higher-risk assets.

Under the proposal, higher-risk C&I loans and securities would continue to include securitizations where more than 50 percent of the assets backing the securitization meet the criteria for higher-risk C&I loans or securities. Concentrations in higher-risk assets, whether they are in the form of a whole loan or a securitization, increase the risk of loss to the FDIC during times of prolonged periods of economic stress. Large and highly complex institutions are sophisticated investors and can typically obtain the information needed to determine whether a securitization meets the 50 percent threshold described above when they purchase interests in these securitizations.

[18] The operating leverage ratio is the borrower's total or senior debt to trailing twelve-month EBITDA.

[19] Enterprise value is a measure of the borrower's value as a going concern.

[20] This debt would also be material if, before the debt was incurred, the borrower had no funded debt.

Trade groups also commented that categorizing securitizations as higher-risk assets based solely on the underlying collateral ignores important risk mitigants such as credit enhancements. The performance of a securitization, however, is highly correlated with the performance of the underlying assets, even when the securitization contains terms or conditions intended to reduce risk. As stated in an interagency NPR issued in December 2011, ''during the crisis, a number of highly rated senior securitization positions were subject to significant downgrades and suffered substantial losses.'' [21] Even where losses have not yet been realized (as in many collateralized loan obligations), the market value of these securitizations declined precipitously during the crisis, reflecting the decline in the market value of the underlying assets and the increased risk of loss.

Higher-Risk Consumer Loans and Securities

Under the proposal, higher-risk consumer loans and securities would be defined as:

(a) All consumer loans where, as of origination, or, if the loan has been refinanced, as of refinance, the probability of default (PD) within two years (the two-year PD) was greater than 20 percent, excluding those consumer loans that meet the definition of a nontraditional mortgage loan; [22] and

(b) Securitizations that are more than 50 percent collateralized by consumer loans meeting the criteria in (a), except those classified as trading book.[23]

An institution would be required to use the information that is or would be reasonably available to a sophisticated investor in reasonably determining whether a securitization meets the 50 percent threshold. Information reasonably available to a sophisticated investor should include, but is not limited to, offering memorandums, indentures, trustee reports, and requests for information from servicers, collateral managers, issuers, trustees, or similar third parties. When determining whether a revolving trust or similar securitization would meet the threshold, an institution could use established criteria, model portfolios, or limitations published in the offering memorandum, indenture, trustee report or similar documents.

Sufficient information necessary for an institution to make a definitive determination may not, in every case, be reasonably available to the institution as a sophisticated investor. In such a case, the institution may exercise its judgment in making the determination. Nevertheless, the FDIC would retain the right to review and audit for compliance with the rule any determination that a securitization does not meet the 50 percent threshold.

In cases where a securitization is required to be consolidated on the balance sheet as a result of SFAS 166 and SFAS 167, and a large institution or highly complex institution has access to the necessary information, an institution may evaluate individual loans in the securitization on a loan-by-loan basis. Any loan within the securitization that meets the definition of a higher-risk asset would be reported as a higher-risk asset and any loan within the securitization that does not meet the definition of a higher-risk asset would not be reported as such. When making this evaluation, the institution would have to follow the transition guidance described in Appendix C, Section C. Once an institution evaluated a securitization for higher-risk asset designation on a loan-by-loan basis, it would have to continue to evaluate all securitizations for which it has the required information in a similar manner (i.e., on a loan-by-loan basis). For securitizations for which the institution does not have access to information on a loan-by-loan basis, the institution would be required to determine whether the securitization meets the 50 percent threshold as described previously for other securitizations.

Institutions would have to determine the PD of a consumer loan as of origination, or, if the loan has been refinanced, as of refinance. When an institution acquires a consumer loan or security, it would have to determine whether the loan or security meets the definition of a higher-risk consumer loan or security using the origination criteria and analysis performed by the original lender. If this information is unavailable, however, the institution would have to obtain recent, refreshed data from the borrower or other appropriate third-party.[24]

In arriving at its proposal, the FDIC carefully reviewed the comments submitted in response to the March and July PRA notices on the subprime loan definition contained in the February rule. Of the 19 respondents commenting on the March PRA notice, 17 raised concerns over the subprime loan definition; 6 of the 8 respondents to the July PRA notice raised such concerns. Further, as the FDIC noted in the public comment file for the July PRA notice, the FDIC met with representatives of four industry trade groups and twice with large and highly complex institutions prior to the close of the comment period on the PRA notice.

The representatives stated that institutions generally do not maintain the data necessary to identify consumer loans as higher-risk under the February rule, and would not be able to collect such data prior to filing their Call Reports for the June 30, 2011, report date. Commenters also stated that adapting current reporting systems to capture such loans automatically would, in some cases, be impossible and would require ongoing manual intervention, which is costly and burdensome.[25]

A group representing the industry also asserted that the definition of subprime loans does not correlate with more sophisticated risk-grading systems generally used by banks internally. While these systems consider the factors included in the subprime definition, they consider these jointly rather than individually, and incorporate other information such as the size and type of delinquency and other measures of the borrower's debt capacity. As a consequence, the group believed that using the definition contained in the February rule would greatly overstate institutions' exposure to subprime loans and relative risk. In the group's view, this overstatement of exposure and relative risk could reduce credit or increase its cost for some types of consumers, such as students, since an institution factors the cost of assessments into its credit and pricing decisions.

The proposed definition would better capture and differentiate higher-risk consumer loans and securities among banks compared to the current

[21] Risk-Based Capital Guidelines: Market Risk: Alternatives to Credit Ratings for Debt and Securitization Positions 76 FR 79380, 79395 (December 21, 2011).

[22] A loan that meets both the definitions of a nontraditional mortgage loan and a higher-risk consumer loan at the time of origination should be reported as a nontraditional mortgage loan. However, if the loan later ceases to meet the definition of nontraditional mortgage loan but continues to still qualify as a higher-risk consumer loan, it would then be reported as a higher-risk consumer loan.

[23] A securitization would be as defined in Appendix A, Section II(B)(16) of Part 325 of the FDIC's Rules and Regulations as it may be amended from time to time.

[24] Somewhat more stringent requirements would apply when an institution acquires loans or securities from another entity on a recurring or programmatic basis.

[25] These data availability concerns, particularly as they relate to institutions' existing loan portfolios, had not been raised as an issue during the rulemaking process on large bank pricing that culminated in the February rule.

definition. In addition, the proposal should be easier for institutions to adopt and implement as it more closely aligns with how they currently measure risk.

This same industry group proposed an alternative definition of subprime consumer loans based on PD within one year from origination. Under the proposal, institutions would report the outstanding balance of consumer loans in their retail portfolios stratified by a specified number of products and PD bands. The FDIC has engaged in extensive discussions with industry representatives regarding this proposal and incorporated many of the proposal's major elements into the NPR.

The FDIC chose to propose a two-year, instead of a one-year, PD in order to more closely align with the time horizon used by recognized third party vendors that produce standard validation charts. These charts include observed default rates over a specified two-year period by credit score and product type. If these charts were modified to conform to the PD estimation guidelines in Appendix C, institutions could use them to classify consumer loans under the proposed definition.

A PD estimated according to the guidelines should reflect the average two-year, stress period performance of loans across a range of remaining maturities, as opposed to the performance of loans within the first two years of origination. The FDIC is concerned with potential default risk throughout the life of the loan and not just over the first two years following origination. By considering different origination time periods and various remaining maturities, the proposed approach should better represent the default risk throughout the life of the loan. Different product types tend to have different default profiles over time, with some products resulting in peak default rates sooner after origination than other products. An approach that considers various remaining maturities should mitigate the default timing bias between products following origination of a loan.

The FDIC intends to collect two-year PD information on various types of consumer loans from large and highly complex institutions. However, the types of information collected and the format of the information collected on the Call Report would be subject to a PRA notice, providing an opportunity for comment, published in the **Federal Register**. The following table is an example of how the FDIC may collect the consumer loan information. Once the definition of higher-risk consumer loans is adopted in a final rule, the FDIC anticipates that appropriate changes to the Call Reports would be made and that institutions would report consumer loans according to the definition in the final rule. As suggested in the example table below and in Appendix 1, institutions would report the outstanding amount of all consumer loans, including those with a PD below the subprime threshold, stratified by the 10 product types and 12 two-year PD bands.[26] In addition, for each product type, institutions would indicate whether the PDs were derived using scores and default rate mappings provided by a third party vendor or an internal approach.[27] Institutions would report the value of all securitizations that are more than 50 percent collateralized by higher-risk consumer loans (other than trading book) as a separate item.

[26] All reported amounts would exclude the maximum amounts recoverable from the U.S. government, its agencies, or government-sponsored agencies under guarantee or insurance provisions, as well as loans that are fully secured by cash collateral. In order to exclude a loan based on cash collateral, the cash would be required to be in the form of a savings or time deposit held by the insured depository institution, the insured depository institution would be required to have a signed collateral assignment of the deposit account, which is irrevocable for the remaining term of the loan or commitment, and the insured depository institution would be required to place a hold on the deposit account, which alerts the institution's employees to an attempted withdrawal. In the case of a revolving line of credit, the cash collateral would have to be equal to or greater than the amount of the total loan commitment (the aggregate funded and unfunded balance of the loan) for the exclusion to apply.

[27] An internal approach would include the use of an institution's own default experience with a particular product and credit score, whether that score was provided by a third party or was internally derived.

Outstanding Balance of Consumer Loans by Two-Year Probability of Default

Product	Two-year Probability of Default											
	≤ 1%	1-4%	4-7%	7-10%	10-14%	14-16%	16-18%	18-20%	20-22%	22-26%	26-30%	>30%
All nontraditional residential mortgages[1]												
Closed end loans secured by first liens on 1-4 family residential properties[2]												
Closed end loans secured by junior liens on 1-4 family residential properties[3]												
Revolving, open-end first liens and credit lines secured by 1-4 family residential properties[4]												
Revolving, open-end junior liens and credit lines secured by 1-4 family residential properties[5]												
Credit cards[6]												
Automobile loans[7]												
Student loans[8]												
Other consumer loans (including single payment and installment) and revolving credit plans other than credit cards[9]												
Consumer leases[10]												
Totals												

Note: All reported amounts would exclude the amounts recoverable from the U.S. government, its agencies, or government-sponsored agencies under guarantee or insurance provisions, as well as loans that are fully secured by cash collateral.

[1] As defined in the Large Bank Pricing rule.

[2] Schedule RC-C item 1(c)(2)(a), excluding loans reported as nontraditional residential mortgages.

[3] Schedule RC-C item 1(c)(2)(b), excluding loans reported as nontraditional residential mortgages.

[4] Part of Schedule RC-C item 1(c)(1), "Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit."

[5] The portion of Schedule RC-C item 1(c)(1) not reported as revolving, open-end senior liens.

[6] Schedule RC-C item 6(a)

[7] Schedule RC-C item 6(c)

[8] Part of Schedule RC-C item 6(d) "Other consumer loans".

[9] The portion of Schedule RC-C item 6(d) not reported as student loans, plus item 6(b) "Other revolving credit plans."

[10] Schedule RC-C item 10(a)

The proposed 20 percent PD threshold was determined based on an evaluation of performance data provided by a couple of large third party vendors of consumer credit scores. Specifically, for each vendor, this data contained observed, two-year default rates and the proportion of consumer accounts captured by credit score and product type. Default rates were calculated in a manner similar to the guidelines in Appendix C. The FDIC considered the proportion of consumer accounts and range of scores that would be deemed higher-risk under different PD thresholds, overall and by product type, and how those results compare to score-based definitions of subprime commonly used by the industry. The FDIC would use the information that would be included in the Call Report to determine whether the PD threshold should be changed in the future.[28]

The FDIC anticipates that it may receive additional or updated information from third party vendors prior to the Board adopting a final rule. The FDIC would consider any additional information received before it proposes that a particular PD threshold be adopted in the final rule. In reviewing the PD threshold, the FDIC would use a methodology similar to the methodology described above. The methodology used would include consideration of the proportion of consumer accounts and range of scores that would be deemed higher risk under different PD thresholds and how those compare to score-based definitions of subprime commonly used in the industry.

During discussions with the industry, a few institutions suggested that the FDIC have the flexibility to modify the time periods used for PD estimation without further notice-and-comment rulemaking. The institutions suggested that the FDIC could either change the time period considered or add additional time periods to the existing time period. The FDIC agrees that having the flexibility to modify the time periods, as part of the risk-based assessment system, would allow the FDIC to better differentiate risk among institutions. For example, a material change in consumer behavior or the development of new consumer products or default data might suggest changes to what should be considered a higher-risk consumer loan. Under these

[28] See 76 FR 10672, 10700 (February 25, 2011) (H. Updating the Scorecard).

circumstances, incorporating new or additional time periods might better capture either the changes in consumer behavior or new potentially higher-risk consumer products so that FDIC can better identify and measure emerging risks. The FDIC would also have, as part of the risk-based assessment system, the flexibility to increase or decrease the PD threshold of 20 for identifying higher-risk consumer loans to reflect the updated consumer default data from the different time periods selected without the necessity of further notice-and-comment rulemaking. Before making changes to the established PD threshold, the FDIC would analyze resulting potential changes in the distribution of the higher-risk consumer loans and would consider the resulting effect on total deposit insurance assessments and risk differentiation among institutions. The FDIC would provide institutions with at least one quarter advance notice of any changes to the PD estimation time periods or the PD threshold. [29]

Nontraditional Mortgage Loans

The proposal does not make changes to the definition of a nontraditional mortgage loan; however, it does clarify how securitizations of nontraditional mortgage loans would be identified under the current definition.[30]

In a comment letter in response to the March and July PRA notices, three industry trade groups stated that the criteria outlined for identifying nontraditional mortgage loans in the February rule do not fully differentiate risk among banks or among nontraditional mortgage loans. The commenters maintained that not all nontraditional mortgage loans contain the same level of risk. The industry suggested that banks identify and report nontraditional mortgage loans by the PD within one year from origination as determined as of origination by a credit scoring system, similar to their recommendation for reporting subprime consumer loans.

After reviewing the merits of the industry's suggestions, the FDIC has concluded that identifying a mortgage loan using a one-year PD would be inappropriate given the unique risks of nontraditional mortgage loans. Unlike leveraged loans and subprime loans, institutions have not indicated any difficulty complying with the existing definition of nontraditional mortgage loans and the FDIC believes that changes to the definition would not result in better risk determination for deposit insurance pricing purposes. The FDIC will monitor future rulemakings regarding Qualified Residential Mortgages and the capital treatment of nontraditional mortgage loans to determine whether any changes to the definition should be considered.

Large and highly complex institutions are sophisticated investors and can typically obtain the information needed to determine whether a securitization meets the 50 percent threshold described above when they purchase interests in these securitizations. The proposal clarifies that an institution would be required to use information reasonably available to a sophisticated investor in reasonably determining whether a securitization meets the 50 percent threshold of the assets backing a securitization contain nontraditional mortgage loans.

Information reasonably available to a sophisticated investor should include, but is not limited to, offering memorandums, indentures, trustee reports, and requests for information from servicers, collateral managers, issuers, trustees, or similar third parties. When determining whether a revolving trust or similar securitization would meet the threshold, an institution could use established criteria, model portfolios, or limitations published in the offering memorandum, indenture, trustee report or similar documents.

Sufficient information necessary for an institution to make a definitive determination may not, in every case, be reasonably available to the institution as a sophisticated investor. In such a case, the institution may exercise its judgment in making the determination. Nevertheless, the FDIC would retain the right to review and audit for compliance with the rule any determination that a securitization does not meet the 50 percent threshold.

In cases where a securitization is required to be consolidated on the balance sheet as a result of SFAS 166 and SFAS 167, and a large institution or highly complex institution has access to the necessary information, an institution may evaluate individual loans in the securitization on a loan-by-loan basis. Any loan within the securitization that meets the definition of a higher-risk asset would be reported as a higher-risk asset and any loan within the securitization that does not meet the definition of a higher-risk asset would not be reported as such. When making this evaluation, the institution would have to follow the transition guidance described in Appendix C, Section C. Once an institution evaluated a securitization for higher-risk asset designation on a loan-by-loan basis, it would have to continue to evaluate all securitizations for which it has the required information in a similar manner (i.e., on a loan-by-loan basis). For a securitizations for which the institution does not have access to information on a loan-by-loan basis, the institution would be required to determine whether the securitization meets the 50 percent threshold as described previously for other securitizations.

Under the proposal, institutions would also have to determine whether residential loans and securities meet the definition of a nontraditional mortgage loan as of origination, or, if the loan has been refinanced, as of refinance, subject to requirements similar to those proposed for higher-risk consumer loans.

When an institution acquires a residential loan or security, it would have to determine whether the loan or security meets the definition of a nontraditional mortgage loan using the origination criteria and analysis performed by the original lender. If this information were unavailable, however, the institution would have to obtain recent, refreshed data from the borrower or other appropriate third-party.[31]

B. Evaluation of Higher-Risk Assets

The FDIC proposes that institutions evaluate C&I and consumer loans as of origination and refinance to determine whether they meet the criteria for higher-risk assets. A loan that is determined to be both a higher-risk consumer and a nontraditional mortgage loan should be reported only as a nontraditional mortgage loan, not both.

C. Large Bank Adjustment Process

The FDIC currently has the ability to adjust a large or highly complex institution's total score (which is used to determine its deposit insurance assessment rate) by a maximum of 15 points (the large bank adjustment).[32] Because the proposed definitions should result in better risk identification and consistent application across the industry, the FDIC anticipates that there would be limited circumstances where the FDIC would consider a large bank adjustment as a result of perceived mitigants to an institution's higher-risk

[29] Reporting all consumer loans by product and PD bands was part of the industry's proposal to strengthen identification of higher-risk consumer loans.

[30] A securitization would be as defined in Appendix A, Section II(B)(16) of Part 325 of the FDIC's Rules and Regulations, as it may be amended from time to time.

[31] Somewhat more stringent requirements would apply when an institution acquires loans or securities from another entity on a recurring or programmatic basis.

[32] 76 FR 10714 (February 25, 2011) to be codified at 12 CFR 327.9(b)(3).

concentration measure. The proposed revised definitions, which include specific exceptions for well-collateralized loans, should result in generally equal treatment of similar loans at different institutions.

D. Audit

Several of the proposed changes could require periodic auditing to ensure consistent reporting across the industry. For example, the PD calculation, whether through credit score mapping or through an internal approach, if not properly monitored, could potentially result in inconsistent application. Also, institutions would need to carefully evaluate their controls for asset-based and floor plan lending to determine whether they can exclude these loans from their higher-risk C&I loans and securities totals. The FDIC expects institutions will have appropriate systems in place for the proper identification and reporting of higher-risk assets. Enhanced review procedures for higher-risk asset reporting should be part of these systems. Institutions' higher-risk identification and reporting programs should include applicable policies, procedures, reviews, and validation (through internal or external audits). The results of any internal reviews or external audits of higher-risk assets reporting should be made available to the FDIC upon request. The FDIC may review and audit for compliance all determinations made by insured institutions for assessment purposes. The FDIC may also review specific details of an institution's reporting, including loans that are excluded from higher-risk assets. Any weakness identified in the reporting of higher-risk assets may be considered when forming supervisory strategies or in the application of adjustments to an institution's total score as outlined in the Guidelines.

E. Updating the Scorecard

As set forth in the February rule, the FDIC has the flexibility to update the minimum and maximum cutoff values used in each scorecard annually without further rulemaking as long as the method of selecting cut-off values remains unchanged.[33] The FDIC can add new data for subsequent years to its analysis and can, from time to time, exclude some earlier years from its analysis. Updating the minimum and maximum cutoff values and weights allows the FDIC to use the most recent data, thereby improving the accuracy of the scorecard method.[34]

The new definitions would allow the FDIC to better measure the risk present in large and highly-complex institutions, but they do not change that risk. Unless the FDIC re-calibrates cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio, however, the proposed changes to the definitions of higher-risk assets could result in significant increases or decreases in the amount of total deposit insurance assessments collected from large and highly complex banks. Each scorecard measure, including the higher-risk assets to Tier 1 capital and reserves ratio, is converted to a score between 0 and 100 based upon minimum and maximum cutoff values for the measure (where the minimum and maximum cutoff values get converted to a score of 0 or 100). Most of the minimum and maximum cutoff values represent the 10th and 90th percentile values for each measure, which are derived using data on large institutions over a ten-year period beginning with the first quarter of 2000 through the fourth quarter of 2009. Since the cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio were calibrated using higher-risk assets data reported in accordance with an institution's existing methodology for identifying leveraged or subprime loans and securities, changing the definitions of these higher-risk assets may result in significant differences in the volume of higher-risk assets reported by institutions, and differences in the amount of deposit insurance assessments collected by the FDIC.

The FDIC does not intend for the proposed changes in definitions to result in the FDIC collecting higher or lower deposit insurance assessment revenue from large and highly complex institutions as a whole (although it may result in individual institutions paying higher or lower deposit insurance assessments). Consequently, the FDIC anticipates that it may need to use its flexibility to update cutoff values to update the minimum and maximum cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio.[35] Changes in the distribution of the higher-risk assets to Tier 1 capital and reserves ratio scores and the resulting effect on total assessments and risk differentiation between institutions would be taken into account in determining changes to the cutoffs. In addition, because the FDIC has not collected any data under the proposed definitions, changes to cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio could be made more frequently than annually. This review would ensure proper risk differentiation between institutions.[36]

F. Implementation and Effective Date

To allow time for institutions to implement systems to comply with the revised definitions, predicated on Call Report changes, the proposed amendments would become effective October 1, 2012. Because the FDIC is proposing no amendments to the definitions of construction and land development loans and nontraditional mortgage loans (other than to clarify how securitizations that meet the definition of a nontraditional mortgage loan are to be identified), the FDIC proposes that institutions continue to define and report these higher-risk assets as they have been doing under the February rule.

Transition Guidance Until Effective Date

Prior to October 1, 2012, large institutions and highly complex institutions will continue to use the transition guidance for leveraged loans and subprime loans as outlined in the General Instructions (Instructions) for Schedule RC–O of the Consolidated Reports of Condition and Income, Memorandum items 6 through 15. The Instructions will be updated as of March 31, 2012 to reflect October 1, 2012 (formerly April 1, 2012) as the date to begin identifying newly originated loans and securities according to the proposed definitions of these two higher-risk asset categories.

This transition guidance provides that, for loans or securities originated or purchased before October 1, 2012, an institution may use either the definition in the February rule or continue to use its existing internal methodology for identifying loans and securities as leveraged or subprime for Schedule RC–O assessment reporting purposes. Institutions that do not have an existing methodology in place to identify loans and securities as leveraged or subprime

[33] 76 FR 10672, 10700 (February 25, 2011) (H. Updating the Scorecard).

[34] If, as a result of its review and analysis, the FDIC concludes that different measures should be used to determine risk-based assessments, that the method of additional or alternative selecting cutoff values should be revised, that the weights assigned to the scorecard measures should be recalibrated, or that a new method should be used to differentiate risk among large institutions or highly complex institutions, changes would be made through a future rulemaking.

[35] 76 FR 10672, 10700 (February 25, 2011).

[36] The FDIC would provide large and highly-complex institutions with at least one quarter advance notice in their quarterly deposit insurance invoice of changes in the cutoff values to ensure that the industry can determine the effect that any changes may have on its assessments.

(because they are not required to report these exposures to their primary federal regulator for examination or other supervisory purposes or do not measure and monitor loans and securities with these characteristics for internal risk management purposes) may continue to apply existing guidance provided by their primary federal regulator, by the agencies' 2001 Expanded Guidance for Subprime Lending Programs, (for consumer loans and securities) or by the February 2008 Comptroller's Handbook on Leveraged Lending (for C&I loans and securities).

Rules in Effect on the Effective Date and Thereafter

Effective October 1, 2012, the proposed definitions described above would apply to:

(1) All C&I loans and securities originated or purchased on or after October 1, 2012;

(2) All consumer loans and securities, except securitizations of consumer loans and securities, whenever originated or purchased;

(3) All residential real estate loans and securities, except securitizations of residential real estate loans, whenever originated or purchased; and

(4) All securitizations of C&I, consumer, and residential real estate loans originated or purchased on or after October 1, 2012.

For consumer and residential real estate loans and securities (other than securitizations) originated or purchased prior to October 1, 2012, an institution would have to determine whether the loan or security met the definition of a higher-risk consumer loan or security no later than December 31, 2012, using information as of the date of the origination of the loan or security if the institution had that information.[37] If the institution did not have that information, it would have to use refreshed data to determine whether a loan or security met the definition. Refreshed data would be defined as the most recent data available as if the loan or security were being originated in the fourth quarter of 2012. In all instances, the refreshed data used would have to be as of July 1, 2012 or later.

For C&I loans and securities originated or purchased before October 1, 2012, and all securitizations originated or purchased before October 1, 2012, institutions would be required to either continue to use their existing internal methodology or existing guidance provided by their primary federal regulator or use the proposed definitions to determine whether to include the loan, security or securitization as a concentration in a risk area for purposes of the higher-risk assets to Tier 1 capital and reserves ratio.

[37] Institutions had to determine whether loans and securities originated or purchased prior to October 1, 2012, met the definition of a construction and land development loan or a nontraditional mortgage loan in time to file accurate reports of condition as of June 30, 2012, and September 30, 2012.

III. Request for Comments

The FDIC seeks comment on every aspect of this proposed rule. In particular, the FDIC seeks comment on the questions set out below. The FDIC asks commenters to include specific reasons for their positions.

1. Deposit Insurance Pricing Definitions

a. Is the collateral test in the higher-risk C&I loans and securities definition appropriately specified?

b. Is the purpose test in the higher-risk C&I loans and securities definition appropriately specified?

c. Can institutions identify and report C&I loans as higher-risk?

d. Is the definition of material appropriate?

e. Should other risk measures, besides PD, be considered to define higher-risk consumer loans and securities?

f. Can institutions report all of their consumer loans into the proposed products and PD bands?

g. Is the proposed PD level of 20 appropriate to identify higher-risk consumer loans?

h. Is the definition of refinance appropriate?

i. Are all definitions clear and are institutions able to implement the definitions as proposed?

2. Regulatory Matters

a. What are the costs and what is the extent of regulatory burden of the proposal compared to the February rule?

b. Will the new effective date for the transition guidance (October 1, 2012) allow institutions sufficient time to update systems to accurately identify and report higher-risk assets as defined in the proposed definitions? If not, what date should the transition guidance be extended to?

c. Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?

d. Does the proposed regulation contain language that is not clear? If so, which language requires clarification?

e. Large institutions and highly-complex institutions would be required to define their higher-risk assets as outlined in Appendix C. Is the direction and language used in Appendix C clear?

IV. Regulatory Analysis and Procedure

A. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC invites your comments on how to make this proposal easier to understand. For example:

- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could the FDIC do to make the regulation easier to understand?

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that each federal agency either certify that a proposed rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis of the rule and publish the analysis for comment.[38] For RFA purposes a small institution is defined as one with $175 million or less in assets.

As of September 30, 2011, of the 7,436 insured commercial banks and savings associations, there were 3,989 small insured depository institutions, as that term is defined for purposes of the RFA. The proposed rule, however, would apply only to institutions with $10 billion or greater in total assets. Consequently, small institutions for purposes of the RFA will experience no significant economic impact should the FDIC implement the proposal in a final rule.

C. Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521 (PRA), are contained in the proposed rule.

[38] See 5 U.S.C. 603, 604 and 605.

D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, Savings associations.

For the reasons set forth above, the FDIC proposes to amend 12 CFR part 327 as follows:

PART 327—ASSESSMENTS

1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1813, 1815, 1817–19, 1821.

2. Revise appendix C to subpart A of part 327 to read as follows:

Appendix C to Subpart A to Part 327—Concentration Measures

The concentration score for large institutions is the higher of the higher-risk assets to Tier 1 capital and reserves score or the growth-adjusted portfolio concentrations score. The concentration score for highly complex institutions is the highest of the higher-risk assets to Tier 1 capital and reserves score, the Top 20 counterparty exposure to Tier 1 capital and reserves score, or the largest counterparty to Tier 1 capital and reserves score. The higher-risk assets to Tier 1 capital and reserves ratio and the growth-adjusted portfolio concentration measure are described below.

A. Higher-Risk Assets/Tier 1 Capital and Reserves

The higher-risk assets to Tier 1 capital and reserves ratio is the sum of the concentrations in each of four risk areas described below and is calculated as:

$$H_i = \sum_{k=1}^{4} \left(\frac{\text{Amount of Exposure}_{i,k}}{\text{Tier 1 Capital} + \text{Reserves}_i} \right)$$

Where:

H_i is institution *i*'s higher-risk concentration measure and *k* is a risk area.[1] The four risk areas (*k*) are construction and land development loans, higher-risk commercial and industrial (C&I) loans and securities, higher-risk consumer loans and securities, and nontraditional mortgage loans.

1. Construction and land development loans include construction and land development loans outstanding and unfunded commitments to fund construction and land development loans, whether revocable or irrevocable.[2]

2. Higher-risk commercial and industrial (C&I) loans and securities include:

• Any commercial loan (funded or unfunded, including irrevocable and revocable commitments) owed by a borrower to the evaluating depository institution with an original amount greater than $5 million if the conditions specified in (a) or (b) below are met as of origination, or, if the loan has been refinanced, as of refinance, and the loan does not meet the asset based lending (ABL) exclusion or the floor plan line of credit exclusion (defined below).[3] [4]

(a)(i) The purpose of any of the borrower's debt[5] (whether owed to the evaluating insured depository institution or another lender) that was incurred within the previous seven years was to finance a buyout (e.g., to fund an equity buyout or fund an Employee Stock Ownership Plan (ESOP)), acquisition (e.g., merger or tender offer), or capital distribution (e.g., dividends, stock repurchase, or cash-out) and such debt was material as defined below; and

(ii) The ratio of the borrower's total debt to trailing twelve-month EBITDA (*i.e.,* operating leverage ratio) is greater than 4 or the ratio of the borrower's senior debt to trailing twelve-month EBITDA (*i.e.,* operating leverage ratio) is greater than 3; or

(b) Any of the borrower's debt (whether owed to the evaluating institution or another lender) is designated as a highly leveraged transaction (HLT) by a syndication agent.

• All securities held by the evaluating institution that are issued by a commercial borrower, if the conditions specified in (a) or (b) above are met, except securities classified as trading book; and

• All securitizations held by the evaluating institution that are more than 50 percent collateralized by commercial loans or securities that would meet the foregoing higher-risk C&I loans and securities definition if directly held by the evaluating institution, except securities classified as trading book.[6]

Institutions must determine whether C&I loans and securities meet the definition of a higher-risk C&I loan and security as of origination, or, if the loan has been refinanced, as of refinance, as discussed in Section A of this Appendix. When an institution acquires a C&I loan or security, it must determine whether the loan or security meets the definition of a higher-risk C&I loan or security using the origination criteria and analysis performed by the original lender. If this information is unavailable, the institution must obtain refreshed data from the borrower or other appropriate third-party. Refreshed data for C&I loans and securities is defined as the most recent data available. However, the data must be as of a date that is no earlier than one year before the acquisition of the C&I loan or security. The acquiring institution must also determine whether an acquired loan or securitization is higher risk as soon as reasonably practicable, but not later than one year after acquisition.

However, when an institution acquires loans or securities from another entity on a recurring or programmatic basis, the acquiring institution may determine whether the loan or security meets the definition of a higher-risk C&I loan or security using the origination criteria and analysis performed by the original lender only if the acquiring institution verifies the information provided.[7] Otherwise, the acquiring institution must obtain the necessary information from the borrower or other appropriate third party to make its own

[1] The higher-risk concentration ratio is rounded to two decimal points.

[2] Construction and land development loans are as defined in the instructions to Call Report schedule RC–C Part I—Loans and Leases, as they may be amended from time to time, and include items reported on line items RC–C 1.a.1 (1–4 family residential construction loans), RC–C 1.a.2. (Other construction loans and all land development and other land loans), and RC–O M.10.a (Total unfunded commitments to fund construction, land development, and other land loans secured by real estate), and exclude RC–O M.10.b (Portion of unfunded commitments to fund construction, land development and other loans that are guaranteed or insured by the U.S. government, including the FDIC), RC–O M.13.a (Portion of funded construction, land development, and other land loans guaranteed or insured by the U.S. government, excluding FDIC loss sharing agreements), RC–M 13a.1.a.1 (1–4 family construction and land development loans covered by loss sharing agreements with the FDIC), and RC–M 13a.1.a.2 (Other construction loans and all land development loans covered by loss sharing agreements with the FDIC).

[3] Commercial loans are as defined as commercial and industrial loans in the instructions to Call Report Schedule RC–C Part I—Loans and Leases, as they may be amended from time to time. An overdraft is a higher-risk C&I loan or security, provided the overdraft is extended to a company and not an individual and it otherwise meets the Call Report definition of a C&I loan.

[4] Unfunded commitments are defined as unused commitments, as this term is defined in the instructions to Call Report Schedule RC–L, Derivatives and Off-Balance Sheet Items, as they may be amended from time to time.

[5] As used in this definition of higher-risk C&I loans and securities, debt includes all forms of obligation and liability, including loans and securities.

[6] A securitization is defined in Appendix A, Section II(B)(16) of Part 325 of the FDIC's Rules and Regulations, as it may be amended from time to time.

[7] Loans or securities acquired from another entity are acquired on a recurring basis if an institution has acquired other loans or securities from that entity at least once within the calendar year or the previous calendar year of the acquisition of the loans or securities in question.

determination of whether the acquired assets should be classified as a higher-risk C&I loan and security. If the financial information is not available as of the origination date or refinance, the institution must obtain refreshed data from the borrower or other appropriate third-party. Refreshed data for C&I loans or securities acquired on a recurring or programmatic basis is defined as the most recent data available, and in any case, the refreshed data used must be as of a date that is no earlier than three months before the acquisition of the C&I loan or security. The acquiring institution must also determine whether a loan or securitization acquired on a recurring or programmatic basis is higher risk as soon as is practicable, but not later than three months after the date of acquisition.

Higher-risk C&I loans and securities include purchased credit impaired loans that meet the definition of higher-risk C&I loans and exclude the following:

- Residential, commercial or farmland loans secured by real estate;
- Loans to finance agricultural production;
- Loans to equity REITS;
- Lease financing receivables;
- Loans to individuals for commercial, industrial, or professional purposes;
- Loans to foreign governments and official institutions;
- Obligations of states and political subdivisions of the U.S.;
- Loans to depository and nondepository financial institutions;
- The maximum amount of any loan that is recoverable from the U.S. government, its agencies, or government-sponsored agencies under guarantee or insurance provisions;
- Loans that are fully secured by cash collateral, provided that the cash is in the form of a savings or time deposit held by the insured depository institution, the insured depository institution has in place a collateral assignment of the deposit account signed by the borrower, the assignment is irrevocable as long as the loan or commitment is outstanding, and a hold is placed on the deposit account that alerts the institution's employees to an attempted withdrawal; in the case of a revolving line of credit, the cash collateral must be equal to or greater than the amount of the total loan commitment (the aggregate funded and unfunded balance of the loan);

C&I loans that are secured by liquid assets other than cash are not excluded from the higher-risk loan designation.

An institution must use the information reasonably available to a sophisticated investor in reasonably determining whether a securitization meets the 50 percent threshold. Information reasonably available to a sophisticated investor includes, but is not limited to, offering memorandums, indentures, trustee reports, and requests for information from servicers, collateral managers, issuers, trustees, or similar third parties. When determining whether a revolving trust or similar securitization meets the 50 percent threshold, an institution may use established criteria, model portfolios, or limitations published in the offering memorandum, indenture, trustee report or similar documents.

Sufficient information necessary for an institution to make a definitive determination may not, in every case, be reasonably available to the institution as a sophisticated investor. In such a case, the institution may exercise judgment in making its determination. Generally, the FDIC may review and audit for compliance all determinations made by insured depository institutions for assessment purposes, including a determination that a securitization does not meet the 50 percent threshold.

In cases where a securitization is required to be consolidated on the balance sheet as a result of SFAS 166 and SFAS 167, and a large institution or highly complex institution has access to the necessary information, an institution may evaluate individual loans in the securitization on a loan-by-loan basis. Any loan within the securitization that meets the definition of a higher-risk asset must be reported as a higher-risk asset and any loan within the securitization that does not meet the definition of a higher-risk asset need not be reported as such. When making this evaluation, the institution must follow the transition guidance described in Appendix C, Section C. Once an institution evaluates a securitization for higher-risk asset designation on a loan-by-loan basis, it must continue to evaluate all securitizations for which it has the required information in a similar manner (i.e., on a loan-by-loan basis). For securitizations for which the institution does not have access to information on a loan-by-loan basis, the institution must determine whether the securitization meets the 50 percent threshold.

Definition of Terms Used Within the Definition of Higher-Risk C&I Loans and Securities

An *acquisition* means the purchase by the borrower of any equity interest in another company or the purchase of any of the assets and liabilities of another company.

A *buyout* means the issuance of debt to finance the purchase or repurchase by the borrower of the borrower's outstanding equity. A buyout could include, but is not limited to, an equity buyout or funding of an ESOP.

A *capital distribution* means that the borrower incurs debt to finance a dividend payment or to finance other transactions designed to enhance shareholder value, such as repurchase of stock.

For purposes of the definition of a higher-risk C&I loan and security, a debt *is material* if it results in a 20 percent or greater increase any time within 12 months in the total funded debt of the borrower (including all funded debt assumed, created or refinanced). Debt is also material if, before the debt was incurred, the borrower had no funded debt.

When calculating either of the borrower's *operating leverage ratios,* the only permitted EBITDA adjustments are those specifically permitted for that borrower at the time of underwriting and only funded amounts of lines of credit must be considered debt.

The debt-to-EBITDA ratio must be calculated using the consolidated financial statements of the borrower unless the loan is to a subsidiary of a larger organization. In that case, the ratio may be calculated using consolidated financial statements of the parent company provided that the parent company and all of its major operating subsidiaries have unconditionally and irrevocably guaranteed the borrower's debt to the reporting large institution or highly complex institution.

In the case of a merger of two companies or the acquisition of one or more companies or parts of companies, the pro-forma debt is to be used as well as the trailing twelve-month pro-forma EBITDA for the combined companies. When calculating the trailing pro-forma EBITDA for the combined company, no adjustments are allowed for economies of scale or projected cost savings that may be realized subsequent to the acquisition unless specifically permitted for that borrower under the loan agreement.

The *original amount* of the loan is defined as:

(1) For loans drawn down under lines of credit or loan commitments, the amount of the line of credit or loan commitment on the date of its most recent approval, extension or renewal prior to the date of the most recent Call Report. If the amount currently outstanding as of the date of the most recent Call Report exceeds this amount, then the original amount is the amount outstanding as of the Call Report date.

(2) For loan participations and syndications, the original amount of the loan participation or syndication is the total amount of the credit originated by the lead lender.

(3) For all other loans, the original amount is the total amount of the loan as of origination or the amount outstanding as of the Call Report date, whichever is larger.

Multiple loans to one borrower are to be aggregated to the extent that the institution's loan data systems can do so without undue cost. If the cost is excessive, the institution may treat multiple loans to one borrower as separate loans.

The *purpose* of the borrower's debt for purposes of meeting the definition of higher-risk C&I loans is determined at the time the debt was incurred by the borrower.

A *securitization* is as defined in Appendix A, Section II(B)(16) of Part 325 of the FDIC's Rules and Regulations, as it may be amended from time to time.

Senior debt includes any portion of total debt that has a priority claim on any of the borrower's assets. A priority claim is a claim that entitles the holder to priority of payment over other debt holders in bankruptcy.

Total debt is defined as all interest-bearing financial obligations and includes, but is not limited to, overdrafts, borrowings, repurchase agreements (repos), trust receipts, bankers acceptances, debentures, bonds, loans (including those secured by mortgages), sinking funds, capital (finance) lease obligations (including those obligations that are convertible, redeemable or retractable), mandatory redeemable preferred and trust preferred securities accounted for as liabilities in accordance with ASC Subtopic 480–10, Distinguishing Liabilities from Equity—Overall (formerly FASB Statement No. 150, ''Accounting for Certain Financial Instruments with Characteristics of both

Liabilities and Equity''), and subordinated capital notes. Total debt excludes pension obligations, deferred tax liabilities and preferred equity.

Asset-Based Lending Exclusion

Asset-based loans that meet certain conditions are excluded from an institution's higher-risk C&I loan totals. An excluded asset-based loan is defined as any loan, new or existing, in which all of the following conditions are present:

• The loan is managed by a lender or group of lenders with experience in asset-based lending and collateral monitoring, including, but not limited to, experience in reviewing the following: Collateral reports, borrowing base certificates,[8] collateral audit reports, loan to collateral values, and loan limits, using procedures common to the industry.[9]

• The insured depository institution has taken, or has the legally enforceable unconditional ability to take, dominion of cash through account control agreements over the borrower's depository accounts such that proceeds of collateral are applied to the loan balance as collected.

• The insured depository institution has a perfected first priority security interest in all assets included in the borrowing base certificate.

• If the loan is a credit facility (revolving or term loan), it must be fully secured by self-liquidating assets such as accounts receivable and inventory.[10] Fully secured is defined as a 100 percent or lower loan-to-value ratio after applying the appropriate discounts (determined by the loan agreement) to the collateral. For purposes of calculating the ratio, a revolving loan amount is the amount of the loan if fully drawn to the maximum permitted borrowing base.

• Advance rates on accounts receivable should generally not exceed 75 percent to 85 percent of eligible receivables and 65 percent of eligible inventory and the bank's lending policy should address maintenance of an accounts receivable and inventory loan agreement that includes the items detailed in the Accounts Receivable and Automobile Dealer Floor Plan Lending Guidance included in Section D of this Appendix.

• Assets must be valued or appraised by an independent third-party appraiser using net orderly liquidation value (NOLV), fair value, or forced sale value (*versus* a ''going concern'' value), whichever is appropriate, to arrive at a net realizable value. Appraisals are to be prepared in accordance with industry standards.

• The insured depository institution must maintain documentation of borrowing base certificate reviews and collateral trend analyses to demonstrate that collateral values are actively, routinely and consistently monitored. A new borrowing base certificate is required at each draw or advance on the loan. At the time of each draw the insured depository institution must validate the assets that compose the borrowing base certificate (by requesting from the borrower a listing of accounts receivable by creditor and a listing of individual pieces of inventory) and certify that the outstanding balance of the loan remains within the collateral formula prescribed by the loan agreement. Borrowing base reporting must be performed and validated (through asset-based tracking reports) at least on a monthly basis and supplemented by periodic, but no less than annual, field examinations (audits) to be performed by individuals who are independent of the credit origination or administration process. There must be a process in place to ensure that the insured depository institution is correcting audit exceptions.

The FDIC retains the authority to verify that institutions are in compliance with sound internal controls and administration practices for asset based loans, as discussed in Section D of this Appendix. Generally, the FDIC may review and audit for compliance all determinations made by insured depository institutions for assessment purposes, including the exclusion of an asset based loan from an institution's reported higher-risk C&I loans and securities totals.

Floor Plan Lines of Credit Exclusion

Floor plan loans that meet certain conditions are excluded from an institution's higher-risk loan totals. An excluded automotive dealer floor plan loan is defined as any loan, new or existing, used to finance the purchase of automobile inventory by an automotive dealer in which all of the following conditions are present:

• The loan is managed by a lender or group of lenders experienced in automobile dealer floor plan lending and monitoring collateral to ensure the borrower remains in compliance with floor plan limits and repayment requirements. Lenders should have experience in reviewing certain items, including but not limited to: Collateral reports, floor plan limits, floor plan aging reports, automobile inventory audits or inspections, and loan-to-collateral value (LTV) ratios. The insured depository institution must obtain and review audited financial statements of the borrower on an annual basis to ensure that adequate controls are in place.[11]

• Each loan advance is made against a specific automobile or under a borrowing base certificate held as collateral at no more than 100 percent of (i) dealer invoice plus freight charges (for new vehicles) or (ii) the cost of a used vehicle at auction or the wholesale value (using the prevailing market guide, e.g., NADA, Black Book, Blue Book). Permissible advance rates depend upon the types of risk mitigation systems the insured depository institution has in place for a particular credit facility. The advance rate of 100 percent of dealer invoice plus freight charges on new vehicles and the advance rate of the cost of a used vehicle at auction or the wholesale value may only be used where there is a manufacturer repurchase agreement or an aggressive curtailment program in place that is tracked by the institution over time and subject to strict controls.

• Each loan is self liquidating (*i.e.,* if the borrower defaulted on the loan, the collateral could be easily liquidated and the proceeds of the sale of the collateral would be used to pay down the loan advance).

• Vehicle inventories and collateral values are closely monitored, including the completion of regular (at least quarterly) dealership automotive inventory audits or inspections to ensure accurate accounting for all vehicles held as collateral. Floor plan aging reports must be reviewed by the institution. Curtailment programs should be instituted where necessary and institutions must ensure that curtailment payments are made on stale automotive vehicle inventory financed under the floor plan loan.[12]

The FDIC retains the authority to verify that institutions are in compliance with sound internal controls and administration practices for floor plan loans, as discussed in Section D of this Appendix. Generally, the FDIC may review and audit for compliance all determinations made by insured depository institutions for assessment purposes, including the exclusion of a floor plan loan from an institution's reported higher-risk C&I loans and securities totals.

3. Higher-risk consumer loans and securities are defined as:

(a) All consumer loans where, as of origination, or, if the loan has been refinanced, as of refinance, the probability of default (PD) within two years (the two-year PD) was greater than 20 percent, excluding those consumer loans that meet the definition of a nontraditional mortgage loan; and

(b) all securitizations that are more than 50 percent collateralized by consumer loans meeting the criteria in (a), except those classified as trading book.[13]

Institutions must determine whether consumer loans meet the definition of a higher-risk consumer loan as of origination, or, if the loan has been refinanced, as of refinance, as discussed in Section A of this Appendix. The two-year PD must be

[8] Borrowing base certificates are defined in Appendix C, Section D.

[9] Guidelines that address acceptable industry-standard controls over asset based lending are included in Appendix C, Section D. Loans must adhere to these guidelines to be eligible for the ABL exclusion.

[10] An asset is self-liquidating if, in the event the borrower defaults, the asset can be easily liquidated and the proceeds of the sale of the assets would be used to pay down the loan. These assets can include machinery, heavy equipment or rental equipment if the machinery or equipment is inventory for the borrower's primary business and the machinery or equipment is included in the borrowing base.

[11] Additional guidelines covering acceptable industry-standard controls over automobile dealer floor plan lending are included in Appendix C, Section D. Loans must also adhere to these guidelines to be eligible for the floor plan line of credit exclusion.

[12] Curtailment programs ensure that the lender receives regular principal payments on floor plan loans in situations where the underlying collateral is not selling as quickly as expected. Under such programs, when vehicles that serve as collateral on a floor plan loan do not sell within a reasonable and specific timeframe, the borrower is required to begin repaying the lender a certain dollar amount (to be determined by the loan agreement) on a monthly or quarterly basis.

[13] A securitization is defined in Appendix A, Section II(B)(16) of Part 325 of the FDIC's Rules and Regulations, as it may be amended from time to time.

estimated using an approach that conforms to the requirements detailed below. When an institution acquires a consumer loan or security, it must determine whether the loan or security meets the definition of a higher-risk consumer loan or security using the origination criteria and analysis performed by the original lender. If this information is unavailable, the institution must obtain refreshed data from the borrower or other appropriate third-party. Refreshed data for consumer loans and securities is defined as the most recent data available. However, the data must be as of a date that is no earlier than three months before the acquisition of the consumer loan or security. The acquiring institution must also determine whether an acquired loan or securitization is higher risk as soon as reasonably practicable, but not later than three months after acquisition.

However, when an institution acquires loans or securities from another entity on a recurring or programmatic basis, the acquiring institution may determine whether the loan or security meets the definition of a higher-risk consumer loan or security using the origination criteria and analysis performed by the original lender only if the acquiring institution verifies the information provided.[14] Otherwise, the acquiring institution must obtain the necessary information from the borrower or other appropriate third party to make its own determination of whether the purchased assets should be classified as a higher-risk consumer loan and security. If the financial information is not available as of the origination date or refinance, the institution must obtain refreshed data from the borrower or other appropriate third-party. Refreshed data for consumer loans or securities acquired on a recurring or programmatic basis is defined as the most recent data available, and in any case, the refreshed data used must be as of a date that is no earlier than three months before the acquisition of the consumer loan or security. The acquiring institution must also determine whether a loan or securitization acquired on a recurring or programmatic basis is higher risk as soon as is practicable, but not later than three months after the date of acquisition.

Higher-risk consumer loans include purchased credit-impaired loans that meet the definition of higher-risk consumer loans and exclude the maximum amounts recoverable from the U.S. government, its agencies, or government-sponsored agencies under guarantee or insurance provisions, and loans that are fully secured by cash collateral, provided that the cash collateral is in the form of a savings or time deposit held by the insured depository institution. In the case of a revolving line of credit, the cash collateral must be equal to or greater than the amount of the total loan commitment (the aggregate funded and unfunded balance of the loan). Loans that are fully secured by savings and time deposits are not higher-risk consumer loans, provided that the insured depository institution has in place a collateral assignment of the deposit account signed by the borrower, the assignment is irrevocable as long as the term or commitment is outstanding, and a hold is placed on the deposit account that alerts the institution's employees to an attempted withdrawal. Consumer loans that are secured by liquid assets other than cash are not excluded from the higher-risk consumer loan definition.

A loan that meets both the nontraditional mortgage loan and higher-risk consumer loan and security definitions at the time of origination, or, if the loan has been refinanced, as of refinance, must be reported only as a nontraditional mortgage loan. However, if the loan ceases to meet the nontraditional mortgage loan definition but continues to meet the definition of a higher-risk consumer loan and security, the loan is to be reported as a higher-risk consumer loan and security.

An institution must use the information that is reasonably available to a sophisticated investor in reasonably determining whether a securitization meets the 50 percent threshold. Information reasonably available to a sophisticated investor includes, but is not limited to, offering memorandums, indentures, trustee reports, and requests for information from servicers, collateral managers, issuers, trustees, or similar third parties. When determining whether a revolving trust or similar securitization meets the threshold, an institution may use established criteria, model portfolios, or limitations published in the offering memorandum, indenture, trustee report or similar documents.

Sufficient information necessary for an institution to make a definitive determination may not, in every case, be reasonably available to the institution as a sophisticated investor, and, in such a case, the institution may exercise judgment in making its determination. Generally, the FDIC may review and audit for compliance all determinations made by insured depository institutions for assessment purposes, including a determination that a securitization does not meet the 50 percent threshold.

In cases where a securitization is required to be consolidated on the balance sheet as a result of SFAS 166 and SFAS 167, and a large institution or a highly complex institution has access to the necessary information, an institution may evaluate individual loans in the securitization on a loan-by-loan basis. Any loan within the securitization that meets the definition of a higher-risk asset must be reported as a higher-risk asset and any loan within the securitization that does not meet the definition of a higher-risk asset need not be reported as such. When making this evaluation, the institution must follow the transition guidance described in Appendix C, Section C. Once an institution evaluates a securitization for higher-risk asset designation on a loan-by-loan basis, it must continue to evaluate all securitizations for which it has the required information in a similar manner (i.e., on a loan-by-loan basis). For securitizations for which the institution does not have access to information on a loan-by-loan basis, the institution must determine whether the securitization meets the 50 percent threshold.

Requirements for PD Estimation

Estimates of the two-year PD for a loan must be based on the observed, stress period default rate for loans of a similar product type made to consumers with credit risk comparable to the borrower being evaluated. The credit risk assessment must be determined using third party or internal scores derived using a scoring system that qualifies as *empirically derived, demonstrably and statistically sound* as defined in 12 CFR 202.2(p)(2011), and has been approved by the bank's model risk oversight and governance process and internal audit mechanism. In the case of a consumer loan with a co-signer or co-borrower, the PD may be determined using the most favorable individual credit score. In estimating the PD based on such scores, institutions must adhere to the following requirements:

(1) The PD must be estimated as the average of the two, 24-month default rates observed from July 2007 to June 2009, and July 2009 to June 2011, where the average is calculated according to the following formula and DR_t is the observed default rate over the 24-month period beginning in July of year t:

$$PD = 1 - \sqrt{(1 - DR_{2007})(1 - DR_{2009})}$$

(2) The default rate for each 24-month period must be calculated as the number of active loans that experienced at least one default event during the period divided by the total number of active loans as of the observation date (i.e., the beginning of the period). A loan is considered active if it was open and not in default as of the observation date and had a positive balance any time within the 12 months prior to the observation date.

(3) The default rate for each 24-month period must be calculated using a stratified random sample of loans that is sufficient in size to derive statistically meaningful results for the product type and credit score being evaluated. The product strata must be as homogenous as possible with respect to the factors that influence default, such that products with distinct risk characteristics are evaluated separately. The loans should be sampled based on the credit score as of the observation date and, for any single product and credit score group, the sample size must be no less than 1,200 loans.

Credit score strata must be determined by partitioning the score range into a minimum of 15 bands. While the width of the credit score bands may vary, the scores within each band must reflect a comparable level of credit risk. However, since performance data for scores at the upper and lower extremes of the population distribution is likely to be limited, the top and bottom bands may include a range of scores that suggest some variance in credit quality.

When the number of score bands is less than the number of credit scores represented in the population, an observed default rate for some scores will not be available. In that case, institutions must estimate the default rate for a particular score using a linear

[14] Loans or securities acquired from another entity are acquired on a recurring basis if an institution has acquired other loans or securities from that entity at least once within the calendar year of the acquisition of the loans or securities in question or the previous calendar year.

interpolation between adjacent, observed default rates, where the observed default rate is assumed to correspond with the score at the midpoint of the range for the band. For example, if one score band ranges from 621 to 625 and has an observed default rate of 4 percent, while the next lowest band ranges from 616 to 620 and has an observed default rate of 6 percent, a 620 score must be assigned a default rate of 5.2 percent, calculated as

$$\left(\frac{.04-.06}{623-618}\right)\cdot(620-618)+.06=.052\cdot$$

When evaluating scores that fall below the midpoint of the lowest score band or above the midpoint of the highest score band, the interpolation must be based on an assumed adjacent default rate of 1 or 0, respectively.

An institution may use internally derived default rates that were calculated using fewer observations or score bands than those specified above under certain conditions. The institution must submit a written request to the FDIC in advance of or concurrent with reporting under that methodology. The request must explain in detail how the proposed approach differs from the rule specifications and the institution must provide support for the statistical appropriateness of the proposed methodology. The request must include, at a minimum, a table with the default rates and number of observations used in each score and product segment. The FDIC will evaluate the proposed methodology and may request additional information from the institution, which the institution must provide. The institution may report using its proposed approach while the FDIC evaluates the methodology. If, after reviewing the request, the FDIC determines that the institution's methodology is unacceptable, the institution will be required to amend its Call Reports and resubmit higher-risk consumer loan amounts according to the FDIC's requirements for PD estimation. The institution will be required to submit corrected information for no more than the two most recently dated and filed Call Reports preceding the FDIC's determination and for any Call Reports after the determination.

(4) The credit scores represented in the historical sample must have been produced by the same entity, using the same or substantially similar methodology as the methodology used to derive the credit scores to which the default rates will be applied. For example, the default rate for a particular vendor score cannot be evaluated based on the score-to-default rate relationship for a different vendor, even if the range of scores under both systems is the same. On the other hand, if the current and historical scores were produced by the same vendor using slightly different versions of the same scoring system and equivalent scores represent a similar likelihood of default, then the historical experience could be applied.

(5) A loan is considered to be in default when it is 90+ days past due, charged-off, or the consumer enters bankruptcy during the 24-month performance window.

The FDIC has the flexibility, as part of its risk-based assessment system, to modify the time periods used for PD estimation without further notice-and-comment rulemaking. The FDIC also has the authority, as part of the risk-based assessment system, to increase or decrease the PD threshold of 20 percent, for identifying higher-risk consumer loans to reflect the updated consumer default data from the different time periods selected without further notice-and-comment rulemaking. Before changing the PD threshold, the FDIC will analyze resulting potential changes in the distribution of higher-risk consumer loans and the resulting effect on total deposit insurance assessments and risk differentiation among institutions. The FDIC will provide institutions with at least one quarter advance notice with their quarterly deposit insurance invoice of any changes to the PD estimation time periods or the PD threshold.

4. Nontraditional mortgage loans include all residential loan products that allow the borrower to defer repayment of principal or interest and include all interest-only products, teaser rate mortgages, and negative amortizing mortgages, with the exception of home equity lines of credit (HELOCs) or reverse mortgages.[15] [16] [17]

For purposes of the higher-risk assets to Tier 1 capital and reserves ratio, nontraditional mortgage loans include securitizations where more than 50 percent of the assets backing the securitization meet the preceding definition of a nontraditional mortgage loan, with the exception of those securities classified as trading book.[18]

Institutions must determine whether residential loans and securities meet the definition of a nontraditional mortgage loan as of origination, or, if the loan has been refinanced, as of refinance, as discussed in Section A of this Appendix. When an institution acquires a residential loan or security, it must determine whether the loan or security meets the definition of a nontraditional mortgage loan using the origination criteria and analysis performed by the original lender. If this information is unavailable, the institution must obtain refreshed data from the borrower or other appropriate third-party. Refreshed data for residential loans and securities is defined as the most recent data available. However, the data must be as of a date that is no earlier than three months before the acquisition of the residential loan or security. The acquiring institution must also determine whether an acquired loan or securitization is higher-risk not later than three months after acquisition.

However, when an institution acquires loans or securities from another entity on a recurring or programmatic basis, the acquiring institution may determine whether the loan or security meets the definition of a nontraditional mortgage loan using the origination criteria and analysis performed by the original lender only if the acquiring institution verifies the information provided.[19] Otherwise, the acquiring institution must obtain the necessary information from the borrower or other appropriate third party to make its own determination of whether the acquired assets should be classified as a nontraditional mortgage loan. If the financial information is not available as of the origination date or refinance, the institution must obtain refreshed data from the borrower or other appropriate third-party. Refreshed data for residential loans or securities acquired on a recurring or programmatic basis is defined as the most recent data available, and in any case, the refreshed data used must be as of a date that is no earlier than three months before the acquisition of the residential loan or security. The acquiring institution must also determine whether a loan or securitization acquired on a recurring or programmatic basis is higher-risk not later than three months after the date of acquisition.

An institution is required to use the information that is reasonably available to a sophisticated investor in reasonably determining whether a securitization meets the 50 percent threshold. Information reasonably available to a sophisticated investor includes, but is not limited to, offering memorandums, indentures, trustee reports, and requests for information from servicers, collateral managers, issuers, trustees, or similar third parties. When determining whether a revolving trust or similar securitization meets the threshold, an institution may use established criteria, model portfolios, or limitations published in the offering memorandum, indenture, trustee report or similar documents.

Sufficient information necessary for an institution to make a definitive determination may not, in every case, be reasonably available to the institution as a sophisticated investor. In such a case, the institution may exercise judgment in making its determination. Generally, the FDIC may review and audit for compliance all determinations made by insured depository institutions for assessment purposes, including a determination that a securitization does not meet the 50 percent threshold.

In cases where a securitization is required to be consolidated on the balance sheet as a result of SFAS 166 and SFAS 167, and a large institution or highly complex institution has access to the necessary information, an institution may evaluate individual loans in the securitization on a loan-by-loan basis. Any loan within the securitization that meets the definition of a higher-risk asset must be reported as a higher-risk asset and any loan

[15] A teaser-rate mortgage loan is defined as a mortgage with a discounted initial rate where the lender offers a lower rate and lower payments for part of the mortgage term.

[16] *http://www.fdic.gov/regulations/laws/federal/2006/06noticeFINAL.html.*

[17] A mortgage loan is no longer considered a nontraditional mortgage loan once the teaser rate has expired. An interest only loan is no longer considered a nontraditional mortgage loan once the loan begins to amortize.

[18] A securitization is defined in Appendix A, Section II(B)(16) of Part 325 of the FDIC's Rules and Regulations, as it may be amended from time to time.

[19] Loans or securities acquired from another entity are acquired on a recurring basis if an institution has acquired other loans or securities from that entity at least once within the calendar year or the previous calendar year of the acquisition of the loans or securities in question.

within the securitization that does not meet the definition of a higher-risk asset would not be reported as such. When making this evaluation, the institution must follow the transition guidance described in Appendix C, Section C. Once an institution evaluates a securitization for higher-risk asset designation on a loan-by-loan basis, it must continue to evaluate all securitizations for which it has the required information in a similar manner (*i.e.,* on a loan-by-loan basis). For securitizations for which the institution does not have access to information on a loan-by-loan basis, the institution must determine whether the securitization meets the 50 percent threshold.

Definition of Refinance/Timing of Classification as a Higher-Risk Asset

1. ''Refinance'' Definition for Consumer Loans

For all consumer loans and securities (including nontraditional mortgage loans), an institution must determine whether the loan or security meets the definition of a higher-risk consumer loan or a nontraditional mortgage loan and must do so as of origination, or, if the loan has been refinanced, as of refinance.

A refinance for this purpose is an extension of new credit or additional funds on an existing loan or the replacement of an existing loan by a new or modified obligation. A refinance includes the consolidation of multiple existing obligations, disbursement of additional funds to the borrower, an increase or decrease in the interest rate, or rescheduling of principal or interest payments to create or increase a balloon payment or extend the legal maturity date of the loan by more than six months. Additional funds include a material disbursement of additional funds or, with respect to a line of credit, a material increase in the amount of the line of credit, but not a disbursement, draw, or the writing of convenience checks within the original limits of the line of credit. Except as noted below for credit cards, a material increase in the amount of the line of credit is defined as a 10 percent or greater increase in the quarter-end line of credit limit.

Modifications to a loan that would otherwise meet this definition of refinance, but result in the classification of a loan as a troubled debt restructuring (TDR), do not constitute a refinance.[20] Any modification made to a consumer loan pursuant to a government program, for example the Home Affordable Modification Program or the Home Affordable Refinance Program, is also not considered a refinance.

An extension of the maturity date of a loan is not, per se, a refinance. A contractual deferral of payments that is consistent with the terms of the original loan agreement (for example, as allowed in some student loans), is not a refinance. For an open-end or revolving line of credit, an advance of funds consistent with the terms of the loan agreement is not a refinance. Deferrals under the Servicemembers Civil Relief Act do not constitute a refinance. Except as provided above, a modification or series of modifications to a closed-end consumer loan do not constitute a refinance.

For credit card loans, replacing an existing card because the original is expiring, for security reasons, or because of a new technology or a new system does not constitute a refinance. Reissuing a credit card that has been temporarily suspended (as opposed to closed) is not a refinance. A non-temporary credit card credit line increase that is not a result of, or related to, a loss mitigation strategy is a refinance.

2. ''Refinance'' Definition for Commercial Loans

For all commercial loans and securities, an institution must determine whether the loan or security meets the definition of a higher-risk C&I loan and security and must do so as of origination or, or, if the loan has been refinanced, as of refinance.

A refinance occurs when the original obligation has been replaced by a new or modified obligation or loan agreement. A refinance includes an increase in the master commitment of the line of credit (not including adjustments to sub-limits under the master commitment), disbursement of additional money other than amounts already committed to the borrower, extension of the legal maturity date, rescheduling of principal or interest payments to create or increase a balloon payment, substantial release of collateral, consolidation of multiple existing obligations, or an increase or decrease in the interest rate. A modification or series of modifications to a commercial loan other than as described in this paragraph does not constitute a refinance.

Modifications to a commercial loan that would otherwise meet this definition of refinance, but result in the classification of a loan as a TDR, do not constitute a refinance. Any modification made to a consumer loan pursuant to a government program, for example the ''Home Affordable Modification Program or the Home Affordable Refinance Program, will not be considered a refinance for these purposes.

B. Updating Scorecard

The FDIC retains the flexibility, as part of the risk-based assessment system, without the necessity of additional notice-and-comment rulemaking, to update the minimum and maximum cutoff values for all measures used in the scorecard. The FDIC may update the minimum and maximum cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio in order to maintain an approximately similar distribution of higher-risk assets to Tier 1 capital and reserves ratio scores as reported prior to the implementation of the proposed amendments or to avoid changing the overall amount of assessment revenue collected.[21] The FDIC will review changes in the distribution of the higher-risk assets to Tier 1 capital and reserves ratio scores and the resulting effect on total assessments and risk differentiation between institutions when determining changes to the cutoffs. The FDIC may update changes to the higher-risk assets to Tier 1 capital and reserves ratio cutoffs more frequently than annually. The FDIC will provide institutions with a minimum one quarter advance notice of changes in the cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio with their quarterly deposit insurance invoice.

C. Application and Transition Guidance

Sections A through C of this Appendix C apply to:

(1) All construction and land development loans, whenever originated or purchased;

(2) All C&I loans and securities originated or purchased on or after October 1, 2012;

(3) All consumer loans and securities, except securitizations of consumer loans and securities, whenever originated or purchased;

(4) All residential real estate loans and securities, except securitizations of residential real estate loans, whenever originated or purchased; and

(5) All securitizations of C&I loans, consumer, or residential loans originated or purchased on or after October 1, 2012.

For consumer and residential real estate loans and securities (other than securitizations) originated or purchased prior to October 1, 2012, an institution must determine whether the loan or security meets the definition of a higher-risk consumer loan and security no later than December 31, 2012, using information as of the date of the origination of the loan or security if the institution has that information.[22] If the institution does not have that information, it must use refreshed data to determine whether a loan or security meets the definition. Refreshed data is defined as the most recent data available as if the loan or security were being originated in the fourth quarter of 2012. In all instances, the refreshed data used must be as of July 1, 2012 or later.

For C&I loans and securities originated or purchased before October 1, 2012, and all securitizations originated or purchased before October 1, 2012, institutions must either continue to use their existing internal methodology or existing guidance provided by their primary federal regulator, or use the definitions detailed in the February rule to determine whether to include the loan, security, or securitization as a concentration in a risk area for purposes of the higher-risk assets to Tier 1 capital and reserves ratio.[23]

D. Accounts Receivable and Automobile Dealer Floor Plan Lending Guidance

1. Accounts Receivable

Loans secured by accounts receivable should be made with advance rates at or below 75 percent to 85 percent of eligible receivables, based on the receivable quality, concentration level of account debtors, and performance of receivables as related to the

[20] Troubled debt restructuring (TDR) is defined as this term is defined in the glossary of the Call Report instructions, as it may be amended from time to time.

[21] 76 FR 10672, 10700 (February 25, 2011).

[22] Institutions had to determine whether loans and securities originated or purchased prior to October 1, 2012, met the definition of a construction and land development loan or a nontraditional mortgage loan in time to file accurate reports of condition as of June 30, 2012, and September 30, 2012.

[23] 76 FR 10672 (February 25, 2011).

terms of sale.[24] An institution's lending policy should address the maintenance of an accounts receivable loan agreement with the borrower. This loan agreement should establish a percentage advance against acceptable receivables, include a maximum dollar amount due from any one account debtor, address the financial strength of debtor accounts, and define acceptable receivables. The definition of acceptable receivables should consider the turnover and dilution rates of receivables pledged, the aging of accounts receivable, and the concentrations of debtor accounts.[25]

Ineligibles must be established for any debtor account where there is concern that the debtor may not pay according to terms. Examples of ineligibles include:

- Accounts receivable balances over 90 days beyond invoice date or 60 days past due, depending upon custom with respect to a particular industry with appropriate adjustments made for dated billings;
- Entire account balances where over 50 percent of the account is over 60 days past due or 90 days past invoice date;
- Accounts arising from other than trade (e.g., royalties, rebates);
- Consignment or guaranteed sales;
- Notes receivable;
- Progress billings;
- Account balances in excess of limits appropriate to account debtor's credit worthiness or unduly concentrated by industry, location or customer; and
- Affiliate and intercompany accounts.

2. Inventory

Loans against inventory should normally be made with advance rates no more than 65 percent of eligible inventory (at the lower of cost valued on a FIFO basis or market) based on an analysis of realizable value. When an appraisal is obtained, up to 85 percent of the NOLV of the inventory may be financed.

Ineligibles must be established for inventory that exhibit characteristics that make it difficult to achieve a realizable value or to obtain possession of the inventory. The following are examples of when inventory is considered ineligible as collateral:

- Slow moving, obsolete inventory and items turning materially slower than industry average;
- Inventory with value to the client only, which is generally work in process; however, it may include raw materials used solely in the client's manufacturing process;
- Consigned inventory or other inventory where a perfected lien cannot be obtained;
- Off-premise inventory subject to a mechanic's or other lien; and
- Specialized, high technology or other inventory subject to rapid obsolescence or valuation problems.

3. Minimum Account Management and Monitoring Standards for Asset Based and Floor Plan Lenders

Accounts receivable and floor plan lending require a rigorous level of account management compared to other forms of lending. A hands-on approach to collateral evaluation and intense financial and client monitoring must be used in order to properly manage these relationships. Clients must submit periodic detailed reports that are routinely analyzed. A staff of specially trained field auditors should visit clients on a regular basis to inspect the collateral and verify the accuracy of the reporting. Examples of detailed reports that must be routinely provided to the asset-based lender include:

Borrowing Base Certificates: A form prepared by the borrower that reflects the current status of the collateral. Certificates, along with supporting information, must be provided on a daily, weekly or monthly basis, depending on the terms of the loan agreement, the financial strength of the borrower and the amount of availability under the revolver. Once received by the lender, this certificate, along with the supporting information, must be reconciled with internal collateral management systems to ensure the accuracy of the collateral base, with any discrepancies reconciled with the borrower. Key information contained in the certificate must include:

- The accounts receivable balance (rolled forward from the previous certificate);
- Sales (reported as gross billings) with detailed adjustments for returns and allowances to allow for proper tracking of dilution and other reductions in collateral;
- Detailed inventory information (e.g., raw materials, work-in-process, finished goods); and
- Detail of loan activity.

Accounts Receivable and Inventory Detail: Monthly accounts receivable and inventory agings must be received in sufficient detail to allow the lender to compute the required ineligibles.

Accounts Payable Detail: Monthly accounts payable agings must be received to monitor payable performance and anticipated working capital needs.

Covenant Compliance Certificates: Borrowers should submit Covenant Compliance Certificates, generally on a monthly or quarterly basis (depending on the terms of the loan agreement) to monitor compliance with the covenants outlined in the loan agreement. Non-compliance with any covenants should be promptly addressed to cure any defaults, with actions taken (e.g., waiver, amendment, default pricing, blocking advance privileges) dependent on the nature of each situation.

Definition of Terms Used in the Accounts Receivable and Automobile Dealer Floor Plan Lending Guidance

Blocked Account: An account that is controlled by an agreement that stipulates that all cash transferred out of the account must go to the lender. Blocked accounts are controlled by the lender. The borrower can make deposits into the blocked account, but maintains no signature authority on the account. Funds flowing into the blocked account originate from (i) direct deposit checks; (ii) lock box deposits; or (iii) wire transfers from other institutions. In the direct deposit or bulk method, the client receives checks from its customers, batches them, and deposits them in kind to the blocked account.

Lock Box: An agreement whereby the borrower's account debtors mail their payment checks to a specified Post Office box controlled by the lender. The lender opens the mail, processes the checks for collection, and forwards a copy or other record of the checks to the borrower. Lock box proceeds are deposited into the borrower's blocked account.

E. Growth-Adjusted Portfolio Concentration Measure

The growth-adjusted concentration measure is the sum of the values of concentrations in each of the seven portfolios, each of the values being first adjusted for risk weights and growth. The product of the risk weight and the concentration ratio is first squared and then multiplied by the growth factor. The measure is calculated as:

$$\mathrm{N}_i = \sum_{k=1}^{7}\left[w_k * \left(\frac{\text{Amount of exposure}_{\mathrm{i,k}}}{\text{Tier 1 Capital} + \text{Reserves}_i} \right)\right]^2 * g_k$$

Where:

N is institution *i*'s growth-adjusted portfolio concentration measure;[26]

k is a portfolio;

[24] Concentration of account debtors is the percentage value of receivables associated with one or a few customers relative to the total value of receivables. Compared to a lender with numerous debtors, a lender with few debtors is exposed to a greater level of risk if one of these debtors does not pay according to its account agreement. Consequently, high levels of concentration reflect higher risk for a lender and must cause the lender to hold higher reserves (advance a lesser percentage) all else equal.

[25] Turnover of receivables is the velocity at which receivables are collected. In general, faster turnover increases the advance rate imposed by the lender.

The dilution rate is the uncollectible accounts receivable as a percentage of sales. The historical dilution rate will impact advance rates. Higher uncollectible accounts will translate into a larger reserve account and less funds advanced to the company.

[26] The growth-adjusted portfolio concentration measure is rounded to two decimal points.

g is a growth factor for institution *i*'s portfolio *k;* and,
w is a risk weight for portfolio *k.*

The seven portfolios (*k*) are defined based on the Call Report/TFR data and they are:

- Construction and land development loans;
- Other commercial real estate loans;
- First-lien residential mortgages and non-agency residential mortgage-backed securities (excludes CMOs, REMICS, CMO and REMIC residuals, and stripped MBS issued by non-U.S. Government issuers for which the collateral consists of MBS issued or guaranteed by U.S. government agencies);
- Closed-end junior liens and home equity lines of credit (HELOCs);
- Commercial and industrial loans;
- Credit card loans; and
- Other consumer loans.[27] [28]

The growth factor, *g,* is based on a three-year merger-adjusted growth rate for a given portfolio; *g* ranges from 1 to 1.2 where a 20 percent growth rate equals a factor of 1 and an 80 percent growth rate equals a factor of 1.2.[29] For growth rates less than 20 percent, *g* is 1; for growth rates greater than 80 percent, *g* is 1.2. For growth rates between 20 percent and 80 percent, the growth factor is calculated as:

$$g_{i,k} = 1 + \left[\frac{1}{3}\left(G_{i,k} - 0.20\right)\right]$$

Where:

$$G_{i,k} = \frac{V_{i,k,t}}{V_{i,k,t-12}} - 1,$$

V is the portfolio amount as reported on the Call Report/TFR and it is the quarter for which the assessment is being determined.

The risk weight for each portfolio reflects relative peak loss rates for banks at the 90th percentile during the 1990–2009 period.[30] These loss rates were converted into equivalent risk weights as shown in Table C.1.

TABLE C.1—90TH PERCENTILE ANNUAL LOSS RATES FOR 1990–2009 PERIOD AND CORRESPONDING RISK WEIGHTS

Portfolio	Loss rates (90th percentile)	Risk weights
First-Lien Mortgages	2.3%	0.5
Second/Junior Lien Mortgages	4.6%	0.9
Commercial and Industrial (C&I) Loans	5.0%	1.0
Construction and Development (C&D) Loans	15.0%	3.0
Commercial Real Estate Loans, excluding C&D	4.3%	0.9
Credit Card Loans	11.8%	2.4
Other Consumer Loans	5.9%	1.2

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix 1—Two-Year Probability of Default Information for Consumer Loans

The FDIC intends to collect two-year PD information on various types of consumer loans from large and highly complex institutions. However, the types of information collected and the format of the information collected will be subject to a Paperwork Reduction Act notice (with an opportunity for comment) published in the **Federal Register**. The following table is an example of how the FDIC may collect the consumer loan information and the kind of information that may be collected. Once the definition of higher-risk consumer loans is adopted in a final rule, appropriate changes to the Call Reports will be made and institutions will be expected to begin reporting consumer loans according to the definition in the final rule. In addition, as suggested in the example table, institutions would report the outstanding amount of all consumer loans, including those with a PD below the subprime threshold, stratified by the 10 product types and 12 two-year PD bands.[31] In addition, for each product type, institutions would indicate whether the PDs were derived using scores and default rate mappings provided by a third party vendor or an internal approach.[32] If an internal approach was used, the institution will also have to indicate whether or not the internal approach meets the minimum number of PD bands and observations required as described in the Requirements for PD Estimation in Appendix C, Section A. Institutions would report as a separate item the value of all securitizations of consumer loans that are more than 50 percent collateralized by consumer loans that would be identified as higher-risk assets (except those classified as trading book).

[27] All loan concentrations should include the fair value of purchased credit impaired loans.

[28] Each loan concentration category should exclude the amount of loans recoverable from the U.S. government, its agencies, or government-sponsored agencies, under guarantee or insurance provisions.

[29] The growth factor is rounded to two decimal points.

[30] The risk weights are based on loss rates for each portfolio relative to the loss rate for C&I loans, which is given a risk weight of 1. The peak loss rates were derived as follows. The loss rate for each loan category for each bank with over $5 billion in total assets was calculated for each of the last twenty calendar years (1990–2009). The highest value of the 90th percentile of each loan category over the twenty year period was selected as the peak loss rate.

[31] All figures would exclude the maximum amounts recoverable from the U.S. government, its agencies, or government-sponsored agencies under guarantee or insurance provisions, as well as loans that are fully secured by cash collateral. In order to exclude a loan based on cash collateral, the cash would have to be in the form of a savings or time deposit held by the insured depository institution. The insured depository institution would also have to have a signed collateral assignment of the deposit account, which was irrevocable for the remaining term of the loan or commitment, and the insured depository institution would have to have placed a hold on the deposit account, which alerts the institution if there are attempts to withdraw or transfer the deposit funds. In the case of a revolving line of credit, the cash collateral would have to be equal to or greater than the amount of the total loan commitment (funded and unfunded balance of the loan) for the exclusion to apply.

[32] An internal approach would include the use of an institution's own default experience with a particular product and credit score, whether that score was provided by a third party or was internally derived.

TABLE 1.1 – TWO-YEAR PROBABILITY OF DEFAULT INFORMATION FOR CONSUMER LOANS

Outstanding Balance of Consumer Loans by Two-Year Probability of Default

Product	Two-year Probability of Default											
	≤ 1%	1-4%	4-7%	7-10%	10-14%	14-16%	16-18%	18-20%	20-22%	22-26%	26-30%	>30%
All nontraditional residential mortgages[1]												
Closed end loans secured by first liens on 1-4 family residential properties[2]												
Closed end loans secured by junior liens on 1-4 family residential properties[3]												
Revolving, open-end first liens and credit lines secured by 1-4 family residential properties[4]												
Revolving, open-end junior liens and credit lines secured by 1-4 family residential properties[5]												
Credit cards[6]												
Automobile loans[7]												
Student loans[8]												
Other consumer loans (including single payment and installment) and revolving credit plans other than credit cards[9]												
Consumer leases[10]												
Totals												

Note: All reported amounts would exclude the amounts recoverable from the U.S. government, its agencies, or government-sponsored agencies under guarantee or insurance provisions, as well as loans that are fully secured by cash collateral.

[1] As defined in the Large Bank Pricing rule.
[2] Schedule RC-C item 1(c)(2)(a), excluding loans reported as nontraditional residential mortgages.
[3] Schedule RC-C item 1(c)(2)(b), excluding loans reported as nontraditional residential mortgages.
[4] Part of Schedule RC-C item 1(c)(1), "Revolving, open-end loans secured by 1-4 family residential properties and extended under lines of credit."
[5] The portion of Schedule RC-C item 1(c)(1) not reported as revolving, open-end senior liens.
[6] Schedule RC-C item 6(a)
[7] Schedule RC-C item 6(c)
[8] Part of Schedule RC-C item 6(d) "Other consumer loans".
[9] The portion of Schedule RC-C item 6(d) not reported as student loans, plus item 6(b) "Other revolving credit plans."
[10] Schedule RC-C item 10(a)

By order of the Board of Directors.

Dated at Washington, DC, this 20th day of March 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–7268 Filed 3–26–12; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 380

RIN 3064–AD94

Enforcement of Subsidiary and Affiliate Contracts by the FDIC as Receiver of a Covered Financial Company

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is proposing a rule (''Proposed Rule''), with request for comments, that implements section 210(c)(16) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'' or the ''Act''), codified at 12 U.S.C. section 5390(c)(16), which permits the Corporation, as receiver for a financial company whose failure would pose a significant risk to the financial stability of the United States (a ''covered financial company''), to enforce contracts of subsidiaries or affiliates of the covered financial company despite contract clauses that purport to terminate, accelerate, or provide for other remedies based on the insolvency, financial condition or receivership of the covered financial company. As a condition to maintaining these subsidiary contracts in full force and effect, the Corporation as receiver must either: transfer any supporting obligations of the covered financial company that back the obligations of the subsidiary or affiliate under the contract (along with all assets and liabilities that

relate to those supporting obligations) to a bridge financial company or qualified third-party transferee by the statutory one-business-day deadline; or provide adequate protection to such contract counterparties. The Proposed Rule sets forth the scope and effect of the authority granted under section 210(c)(16), clarifies the conditions and requirements applicable to the receiver, addresses requirements for notice to certain affected counterparties, and defines key terms.

DATES: Written comments on the Rule must be received by the FDIC no later than May 29, 2012.

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

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for Submitting comments on the Agency Web Site.
- *Email: Comments@FDIC.gov.* Include ''RIN 3064–AD94'' in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–I002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATON CONTACT: R. Penfield Starke, Assistant General Counsel, Legal Division (703) 562–2422; Elizabeth Falloon, Counsel, Legal Division (703) 562–6148; John W. Popeo, Senior Attorney, Legal Division (972–761–8171); Charlton R. Templeton, Resolution Planning and Implementation Specialist, Office of Complex Financial Institutions (202–898–6774).

SUPPLEMENTARY INFORMATION: Title II of the Dodd-Frank Act provides for the appointment of the FDIC as receiver of a covered financial company that poses a systemic risk to the nation's economic stability and outlines the process for the orderly resolution of a covered financial company following the FDIC's appointment as receiver. Section 209, codified at 12 U.S.C. section 5389, authorizes the FDIC, in consultation with the Financial Stability Oversight Council, to prescribe rules and regulations as the FDIC considers necessary or appropriate with respect to the rights, interests, and priorities of creditors, counterparties, security entitlement holders, or other persons with respect to any covered financial company and other matters necessary or appropriate to the implementation of the orderly liquidation authority established under Title II of the Act. Pursuant to the authority granted by section 209, the FDIC is issuing the Proposed Rule, with request for comments.

I. Background

Fundamental to the orderly liquidation of a covered financial company is the ability to continue key operations, transactions and services that will maximize the value of the firm's assets and operations and avoid a disorderly collapse in the marketplace. To facilitate this continuity of operations, the Dodd-Frank Act provides several tools to preserve the value of the covered financial company's assets and business lines, including the powers granted in section 210(c)(16), codified at 12 U.S.C. 5390(c)(16). Specifically, section 210(c)(16) provides that:

> The Corporation, as receiver for a covered financial company or as receiver for a subsidiary of a covered financial company (including an insured depository institution) shall have the power to enforce contracts of subsidiaries or affiliates of a covered financial company, the obligations under which are guaranteed or otherwise supported by or linked to the covered financial company, notwithstanding any contractual right to cause the termination, liquidation, or acceleration of such contracts based solely on the insolvency, financial condition or receivership of the covered financial company if—
>
> (i) such guaranty or other support and all related assets and liabilities are transferred to and assumed by a bridge financial company or a third party (other than a third party for which a conservator, receiver, trustee in bankruptcy or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding) * * * [by 5 p.m. (eastern time) on the business day following the date of appointment]; or
>
> (ii) the Corporation, as receiver, otherwise provides adequate protection with respect to those obligations.

The conditions contained in (i) and (ii) of the quoted statute were included to assure counterparties that any contractual right to guarantees or other support, including claims on collateral or other related assets, would be protected. Thus, section 210(c)(16) requires, as a condition to the authority to enforce subsidiary or affiliate contracts that are ''linked to'' the financial condition of the covered financial corporation through a default provision, that the Corporation as receiver transfer any guaranty or other support provided by the specified covered financial company for the contractual obligations together with all related collateral to a bridge financial company or other qualified transferee within one business day after its appointment as receiver. In the alternative, if the receiver does not transfer the support and the related assets and liabilities, the receiver must provide ''adequate protection'' with respect to any support or collateral not transferred in order to preserve its right to enforce the contract of the subsidiary or affiliate.

In providing for the orderly liquidation authority of Title II, Congress recognized the structural complexity of large financial companies that might pose a threat to the financial stability of the nation. Accordingly, the Dodd-Frank Act provides certain particular authorities with respect to subsidiaries and affiliates of the covered financial company. For instance, section 210(a)(1)(E) of the Dodd-Frank Act provides an expedited procedure to allow the Corporation to appoint itself as the receiver of certain subsidiaries of a covered financial company if the Corporation and the Secretary of the Treasury jointly determine that such subsidiary is in default or in danger of default and that such action would mitigate serious adverse effects on the financial stability of the United States and would facilitate the orderly liquidation of the covered financial company. That section further provides that upon such an appointment, the subsidiary would be treated as a covered financial company, and the Corporation would be able to exercise the full range of special powers available to the receiver.

In certain cases, however, the receiver for the covered financial company may find that the best course of action to maximize the value of the covered financial company and to mitigate systemic risk would be to avoid actions that place subsidiaries in danger of default or that necessitate complex interlocking receiverships. The affiliated legal entities that collectively comprise a complex financial institution typically share and provide intra-group funding, guarantees, administrative support,

human resources and other operational and business functions. Some of these operations and activities may be critical to the day-to-day functions and overall operations of the group. In addition, certain significant subsidiaries of a covered financial company may be essential to core business lines or conduct critical operations that, if discontinued, may threaten the stability of the financial markets. In these circumstances, orderly liquidation of a covered financial company may best be accomplished by establishing a single receivership of the parent holding company and transferring valuable operations and assets to a solvent bridge financial company, including the stock or other equity interests of the company's various subsidiaries. Accordingly, the Dodd-Frank Act provides the FDIC with the tools and flexibility to act effectively as receiver for the covered financial company at the holding company or parent level without placing solvent subsidiaries into receivership. This approach may be the best means of preserving value, minimizing the shock to the financial system, providing additional flexibility to mitigate cross-border resolution issues for global systemically-important financial companies, and allowing for a more expeditious resolution of a covered financial company.

Where such an approach is adopted, the powers granted to the receiver under section 210(c)(16) are essential to preservation of going-concern value of the subsidiaries for the benefit of the parent in receivership. Absent this statutory provision, counterparties to contracts of subsidiaries and affiliates could exercise contractual rights to terminate their agreements based upon the insolvency of the specified covered financial company. As a result, otherwise viable affiliates of the covered financial company could become insolvent, thereby inciting the collapse of interrelated companies and potentially amplifying ripple effects throughout the economy.

As described in more detail below, this Proposed Rule would clarify the scope of the authority granted in section 210(c)(16) as well as conditions and requirements applicable to the receiver. The Proposed Rule makes clear that the effect of this enforcement authority is that no party may exercise any remedy under a contract simply as a result of the appointment of the receiver and the exercise of its orderly liquidation authorities as long as the receiver complies with the statutory requirements. The Proposed Rule would address requirements for notice to affected counterparties and defines key terms. It also would clarify the term ''adequate protection'' in a manner consistent with its interpretation under the Bankruptcy Code.

II. Proposed Rule

Overview

The Proposed Rule would clarify that the power of the Corporation as receiver to enforce contracts of subsidiaries and affiliates under Dodd-Frank Act section 210(c)(16) effectively preserves contractual relationships of subsidiaries and affiliates of the covered financial company during the orderly liquidation process. The Proposed Rule would identify certain contracts that are ''linked to'' the covered financial company within the meaning of the statute, as well as contracts that also are ''supported by'' the covered financial company. Under the statute, a contract is ''linked to'' a covered financial company if it contains a provision that provides a contractual right to ''cause the termination, liquidation or acceleration of such contract based solely on the insolvency, financial condition, or receivership of the covered financial company.'' That type of provision, called a ''specified financial condition clause'' in the Proposed Rule, is more fully defined in the Proposed Rule. Although the statute speaks in terms of the power to enforce a contract to which the receiver is not a party, the Proposed Rule would recognize the practical effect of the intent of this authority, which is that the counterparty to such a contract may not exercise remedies in connection with a specified financial condition clause if the statutory conditions are met. No action is required of the receiver to enforce a linked contract; the Proposed Rule would make clear that the contract would remain in full force and effect unless the receiver failed to meet the requirements with respect to any supporting obligations of the covered financial company.

The Proposed Rule would establish that if the subsidiaries' obligations under the linked contract are supported by the covered financial company through, for example, guarantees or the granting of collateral that supports the obligations, the Corporation as receiver must either (a) transfer such support (along with all related assets and liabilities) to a qualified transferee not later than 5 p.m. (eastern time) on the business day following the appointment of the receiver, or (b) provide ''adequate protection'' to contract counterparties following notice given to the counterparties in accordance with the guidelines set forth in the Proposed Rule by the one-business-day deadline.

The Proposed Rule also would clarify the meaning of the statutory provision regarding a contractual obligation that is ''guaranteed or otherwise supported by'' the covered financial company. Support includes guarantees that may or may not be collateralized, netting arrangements and other examples of financial support of the obligations of the subsidiary or affiliate under the contract. In circumstances where a contract of a subsidiary or affiliate is linked to the financial condition of the parent company via a ''specified financial condition clause,'' but where the obligations of the subsidiary or affiliate are not ''supported by'' the covered financial company through guarantees or similar supporting obligations, the requirement to transfer support and related assets or provide adequate protection does not apply. The mere existence of a ''specified financial condition clause'' does not constitute a ''support'' obligation by the covered financial company, and the Proposed Rule would make it clear that the subsidiary contract remains enforceable without any requirement to effectively create new support where none originally existed. This is consistent with the effect of sections 210(c)(13), providing that *ipso facto* clauses in contracts of the covered financial company are unenforceable, and 210(c)(8) of the Dodd-Frank Act, providing that ''walkaway clauses'' in qualified financial contracts of the covered financial company are unenforceable. In the case of those types of contractual provisions, there is no specified entity required to provide support, hence the concept of alternate support or adequate protection is inapplicable. In the same way, under the Proposed Rule, the concept of adequate protection does not arise in the absence of supporting obligations by the specified entity.

The Proposed Rule similarly applies broadly to all contracts, and not solely to qualified financial contracts. For example, a real estate lease or a credit agreement, neither of which would typically be classified as a qualified financial contract, would be subject to enforcement under section 210(c)(16) and the Proposed Rule notwithstanding a specified financial condition clause that might, for instance, give a lessor the right to terminate a lease based upon a change in financial condition of the parent of the lessee. A swap agreement of a subsidiary or affiliate would be subject to section 210(c)(16) and the Proposed Rule in the same manner if the

agreement contains specified financial condition clause.

The Proposed Rule would not affect other provisions of the Dodd-Frank Act governing qualified financial contracts, such as sections 210(c)(8) (''Certain Qualified Financial Contracts'') and 210(c)(9) (''Transfer of Qualified Financial Contracts''). For example, where a covered financial company's support of a subsidiary or affiliate obligation would itself be considered a qualified financial contract, such as a securities contract, the provisions of section 210(c)(9) that prohibit the selective transfer of qualified financial contracts with a common counterparty (or a group of affiliated counterparties) would continue to apply. Likewise, the provisions in section 210(c)(10) of the Dodd-Frank Act applicable to counterparties of qualified financial contracts also would continue to apply. On the other hand, if the covered financial company's support of a subsidiary or affiliate consists of multiple contracts that are not qualified financial contracts, the Corporation as receiver may transfer all or a portion of such group of contracts as long as it provides adequate protection for the supporting obligations that were not transferred. Similarly, the Corporation may transfer all or a portion of ''related assets and liabilities'' that are not qualified financial contracts if it provides adequate protection for the portion of the assets and liabilities that was retained by the Corporation as receiver.

Section-by-Section Analysis

Paragraph (a) of the Proposed Rule would state the general rule with respect to the authority granted under section 210(c)(16) of the Dodd-Frank Act, i.e., that the contracts of a subsidiary or affiliate of a covered financial company are enforceable notwithstanding the existence of a ''specified financial condition clause'' that provides a counterparty with the right to terminate or exercise remedies based upon the financial condition of the parent or affiliate covered financial company, provided that the FDIC as receiver for the covered financial company transfers all support and related assets and liabilities that back the obligations of such subsidiary or affiliate. To the extent that the receiver fails to transfer all support and related assets and liabilities, it must provide adequate protection to such counterparty to preserve its right to enforce the contracts of the subsidiary. The effect of this ability to enforce the contract is intended to be broad enough to preclude the counterparties from terminating or exercising other remedies such as requiring additional collateral but is intended to be limited in scope solely to remedies arising out of a specified financial condition clause not other contractual defaults by the subsidiary or affiliate. The ability either to transfer support or to provide adequate protection can be exercised in the alternative, or in combination. For example, if some, but not all collateral is transferred, appropriate adequate protection may be provided in lieu of the collateral not transferred.

The deadline for the transfer of support is the same as the time limit applicable to the transfer of qualified financial contracts under section 210(c)(10) of the Dodd-Frank Act, i.e., by 5 p.m. (eastern time) on the next business day. Although the decision to provide adequate protection in lieu of transferring support must also be made and steps must be taken that are reasonably calculated to provide notice within a business day, the language of the Proposed Rule does not require that the adequate protection be fully in place by that next-day deadline. Although the failure to complete within a business day the documentation or transactions necessary should not be deemed to be a waiver of the right to enforce the contract, once the receiver has provided notice of its intent to transfer support or provide adequate protection, the counterparty would be entitled to the benefit of the adequate protection even before the documentation or transfer of collateral were fully completed, if necessary.

The Proposed Rule would provide that a qualified transferee such as a bridge financial company or solvent third-party acquirer, as well as the Corporation as receiver, would have the authority to enforce linked contracts under the section 210(c)(16) of the Dodd-Frank Act. This is consistent with the intent of the statute that subsidiary and affiliate contracts should remain in effect and enforceable through the entire orderly resolution process. Also, the subsidiary or affiliate continues to have the ability to enforce the terms of such contract as well. In essence, the effect of such authority to enforce is substantively the same as a prohibition of the counterparty to assert a specified financial condition clause against the subsidiary or affiliate. Effectively, the Proposed Rule would make clear that the practical effect of the operation of section 210(c)(16) is similar to that of section 210(c)(13) (prohibiting counterparties from the exercise of certain rights arising out of *ipso facto* clauses) and section 210(c)(8) (prohibiting counterparties to qualified financial contracts from the exercise of certain rights arising out of walkaway clauses); i.e., that the counterparties are prohibited from exercising remedies under a specified financial condition clause if the statutory conditions are met.

The statute expressly states that the power to enforce contracts of a subsidiary in the circumstances described in section 210(c)(16) is vested in ''[t]he Corporation, as receiver for a covered financial company or as receiver for a subsidiary of a covered financial company (including an insured depository institution).'' This is captured in subparagraph (a)(3) of the Proposed Rule. This recognizes that the preservation of value through the enforcement of subsidiary and affiliate contracts is important to all of the interconnected entities that are related to the entity in receivership. The effect of the statute is to prohibit the counterparty from terminating or exercising remedies based solely on the condition of the covered financial company. Once the essential link to the covered financial company is established via the specified financial condition clause, all of the subsidiaries of the covered financial company as well as the bridge financial company or qualified transferee share the benefit of the authority to enforce.

Definitions

The Proposed Rule would include eight definitions: ''linked,'' ''specified financial condition clause,'' ''support,'' ''related assets and liabilities,'' ''qualified transferee,'' ''subsidiary,'' ''affiliate,'' and ''control.''

A contract is ''linked'' to a covered financial company if it contains a specified financial condition clause naming the covered financial company as the specified company.

The term ''specified financial condition clause'' is intended to broadly capture any provision that gives any counterparty a right to terminate, accelerate or exercise default rights or remedies as a result of any action or circumstance that results in or arises out of the exercise of the orderly liquidation authority. Each aspect of the definition of the term ''specified financial condition clause'' should be read expansively to effectuate the statutory intent that counterparties are effectively stayed from exercising rights under such a clause to terminate contracts or exercise other remedies during a Title II resolution process if the requirements of the statute are met. Thus, a specified financial condition clause includes any clause that might be interpreted as giving rise to a termination right or

other remedy due to the insolvency of the specified covered financial company that might have precipitated the appointment of the receiver, such as an act of insolvency or a downgrade in a rating from a rating agency. Likewise, the definition is broad enough to include a change in control provision that creates termination rights or other remedies upon the appointment of the FDIC as receiver or other change in control, such as the transfer of stock in the subsidiary to the bridge financial company or the sale, conversion or merger of the bridge financial company or its assets. The intent is to allow the subsidiary or affiliate contract to remain in effect despite the exercise of any or all of the authorities granted to the FDIC as receiver for a covered financial company throughout the orderly liquidation process.

Although the language of the statute refers to the counterparty's rights as ''termination, liquidation or acceleration,'' that list of remedies is not intended to be exclusive as the overall intent of the statute is to provide the FDIC with the power it needs to preserve going-concern value of the covered financial company as long as the rights of counterparties to receive bargained-for support is respected. Accordingly, the Proposed Rule uses the broader phrase ''terminate, liquidate, accelerate or declare a default under'' the contract. In effect, the specified financial condition clause is unenforceable if the statutory requirements are met. In addition, by clarifying that the link created by the specified financial condition clause may operate ''directly or indirectly,'' the Proposed Rule clarifies that the scope of the defined term includes contracts where the specified company under the clause may be another company or an affiliate in the corporate structure so long as the ultimate triggering event relates to the financial condition of the covered financial company or the Title II actions take with respect to that covered financial company. The term ''specified company'' used in the definition is consistent with terminology commonly used in such provisions in derivatives contracts to refer to the company whose financial condition is the basis for the termination right or other remedy.

Language in this definition is borrowed from sections of the Dodd-Frank Act addressing related matters, such as the enforceability of contracts of the covered financial company notwithstanding *ipso facto* clauses (section 210(c)(13)) and walkaway clauses with respect to qualified financial contracts (section 210(c)(8)(F)). The fact that this language is adapted and expanded upon should not be deemed to reflect any interpretation of the meaning or possible limitations of those sections. The broad language of this definition reflects the intent that it be read to accomplish the purpose of section 210(c)(16) to ensure that the receiver has the power to avoid precipitous terminations by counterparties of the subsidiary resulting in disorderly collapse and a loss of value to the covered financial company.

In the event a counterparty (including its affiliates) has more than one contract with the subsidiary or affiliate of the covered financial company, any contract with a cross-default provision with respect to another contract containing a specified financial condition clause also would be ''linked.''

The term ''support'' means to guarantee, indemnify, undertake to make any loan, advance or capital contribution, maintain the net worth of the subsidiary or affiliate, or provide other financial assistance. The proposed definition does not include other assistance that is not financial in nature, such as an undertaking to conduct specific performance. Generally, if the obligation of the counterparty to perform is linked to the financial condition of the parent, the support also would likely be financial, and other types of arrangements are beyond the scope of what was intended by the statute. We are requesting comments with respect to whether this definition is sufficiently comprehensive in the Notice of Proposed Rulemaking.

The term ''related assets and liabilities'' includes assets of the covered financial company serving as collateral securing the covered financial company's support obligation, and setoff rights or netting arrangements to which the covered financial company is subject if they are related to the covered financial company's support. It should be noted, however, that if the ''support'' were in the nature of a non-recourse guarantee, or an unsecured limited recourse guarantee, the related assets and liabilities would not consist of all of the assets of the covered financial company. The transfer of an unsecured guarantee or obligation to a qualified transferee would meet the requirements of the Proposed Rule in this regard, without the transfer of any particular assets. The definition also broadly includes any liabilities of the covered financial company that directly arise out of or relate to its support of the obligations or liabilities of the subsidiary or affiliate. In some instances, this definition may be redundant with the definition of support, as a guaranty could be both a related liability or a supporting obligation. The broader definition is intended to make clear that the full range of supporting obligations and related assets and liabilities must be transferred to ensure that the counterparties are in substantially the same position as they were prior to the transfer to the qualified transferee.

It is important to note that in some situations ''support'' and ''related assets and liabilities'' are themselves qualified financial contracts. Section 210(c)(8)(D)(ii)(XII) of the Act includes ''securities contracts'' as qualified financial contracts, and defines securities contracts to include ''any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.'' To the extent such support and related assets and liabilities are securities contracts or other forms of qualified financial contracts, they are subject to the rules applicable to the treatment of qualified financial contracts, including the so-called all-or-none rule under section 210(c)(9).

The term ''qualified transferee'' specifically includes a bridge financial company as well as any other unrelated third parties that assume the support of the covered financial company (and all related assets and liabilities). A qualified transferee can include both the bridge financial company and a subsequent transferee; for instance, if assets and liabilities, including the support and related assets and liabilities are transferred first to a bridge financial company and then to another acquirer either prior to or upon the termination of the bridge financial company pursuant to the orderly liquidation authorities granted under Title II of the Dodd-Frank Act.

The definition of the terms ''subsidiary'' and ''affiliate'' are consistent with the definitions given to such terms in the Dodd-Frank Act. Section 2(18) of the Act, codified at 12 U.S.C. 5301(18), provides that these terms will have the same meanings as in section 3 of the FDI Act (12 U.S.C. 1813). Under the FDI Act, the term ''subsidiary'' is broadly defined as ''any company which is owned or controlled directly or indirectly by another company * * *.'' ''Affiliate is defined by reference to the Bank Holding Company Act, 12 U.S.C. 1841(k) as ''any company that controls, is controlled by,

or is under common control with another company.''

The statute refers to the definition of ''control'' provided in the FDI Act, which in turn, refers to the definition provided in the Bank Holding Company Act, 12 U.S.C. 1841(a). The Proposed Rule streamlines these cross references, clarifies that certain provisions of the Bank Holding Company Act definition are inapplicable in this context, and adopts the flexible approach of conforming to the relevant provisions of the Bank Holding Company Act and regulations promulgated thereunder at the time of appointment of the receiver.

In effect, the Proposed Rule would define ''control'' to include a company that directly or indirectly or acting through one or more persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the company. Under the Proposed Rule, a company may also exercise ''control'' if that company controls in any manner the election of a majority of the directors or trustees of the company. This definition is consistent with the Bank Holding Company Act definition as it has been reflected in regulations promulgated under that section, including Regulation W (12 CFR 223.3(g)) and Regulation Y (12 CFR 225.2(e)).

Section 2 of the Dodd-Frank Act expressly adopts the FDI Act definitions that incorporate the Bank Holding Company Act definitions ''except to the extent the context otherwise requires.'' Parts of the Bank Holding Company Act definition of ''control'' are inapposite to the context of section 210(c)(16). Provisions that provide for a determination of ''control'' made by the Federal Reserve Board of Governors pursuant to a notice and hearing are inconsistent with the expedited decisionmaking expressly required by section 210(c)(16) and would undermine the statutory goal of providing prompt certainty to counterparties with respect to their contractual rights and remedies.

Adequate Protection

Paragraph (c) of the Proposed Rule describes the different ways that the Corporation may provide adequate protection in the event that it does not transfer a covered financial company's support to a qualified transferee. The definition of adequate protection is consistent with the definition in section 361 of the Bankruptcy Code, which also formed the basis of the definition of adequate protection in the context of treatment of certain secured creditors under 12 CFR 380.52. Adequate protection may include any of the following: (1) Making a cash payment or periodic cash payments to the counterparties of the contract to the extent that the failure to cause the assignment and assumption of the covered financial company's support and related assets and liabilities causes a loss to the counterparties; (2) providing to the counterparties a guaranty, issued by the Corporation as receiver for the covered financial company, of the obligations of the subsidiary or affiliate of the covered financial company under the contract; or (3) providing relief that will result in the realization by the claimant of the indubitable equivalent of the covered financial company's support. The phrase ''indubitable equivalent,'' which appears in section 361 of the Bankruptcy Code, is intended to have a meaning consistent with its meaning in bankruptcy, in conformance with section 209 of the Dodd-Frank Act that requires rules promulgated under Title II of the Act to be ''harmonized'' with the Bankruptcy Code where possible.

It is important to note that although a guaranty of the Corporation as receiver is expressly included among the enumerated examples of ''adequate protection'' in paragraph (c) of the Proposed Rule, the omission of such specific reference in 12 CFR 380.52 is not intended to suggest that such a guaranty would not constitute adequate protection to secured creditors under to 12 CFR 380.52. The guaranty of the receiver is, in any event, the indubitable equivalent of any guaranty or support that it may replace, and the express mention of the guaranty is added only for the avoidance of any doubt. Any such guaranty issued in accordance with the Act would be backed by the assets of the covered financial company, and also would be supported by the orderly liquidation fund and the authority of the Corporation as manager of the orderly liquidation fund to assess the financial industry pursuant to section 210(o) of the Act. Such a guaranty would in all events qualify as the indubitable equivalent of any guaranty or support that it may replace. The express mention of the guarantee is added merely for the avoidance of any doubt. The NPR will request comment on whether the interpretation of ''adequate protection'' under Section 380.52 should be consistent with the interpretation under the Proposed Rule, and whether Section 380.52 should be amended to include the express reference to the receiver's guarantee for the sake of consistency and clarity.

Notice of Transfer or Provision of Adequate Protection

Paragraph (d) of the Proposed Rule provides that if the Corporation as receiver transfers any support and related assets and liabilities of the covered financial company or decides to provide adequate protection in accordance with subparagraphs (a)(1) and 2, it will promptly take steps to notify contract counterparties of such transfer or provision of adequate protection. Although the statute does not contain a notice requirement, the Proposed Rule would require that these reasonable steps be taken to provide notice in recognition of the practical reality that contract counterparties will need to know whether they may exercise remedies under a specified financial condition clause. In acknowledgement of the public's growing reliance on communication using the Internet as well as the prevalence of online commerce, the Proposed Rule provides that the Corporation may post such notice on its public Web site, the Web site of the covered financial company or the subsidiary or affiliate, or provide notice via other electronic media. While the Corporation will endeavor to provide notice in a manner reasonably calculated to provide notification to the parties in a timely manner, the provision of actual notice is not a condition precedent to enforcing such contracts. Any action by a counterparty in contravention of section 210(c)(16) will be ineffective, whether or not such counterparty had actual notice of the transfer of support or provision of adequate protection. Further, where the contract of the subsidiary or affiliate is linked to the covered financial company but not otherwise supported by the covered financial company, actual notice of by the Corporation of its appointment as receiver or its intent to exercise the authority under section 210(c)(16) is not required.

III. Request for Comments

The FDIC seeks comments on all aspects of the Proposed Rule. Comments will be considered by the FDIC and appropriate revisions will be made to the Proposed Rule, if necessary, before a final rule is issued. Comments are specifically requested on the following:

1. What terms defined by the Proposed Rule require further clarification, and how should they be defined?

2. Are there other terms used in the Proposed Rule that should be defined? Should the term ''Business Day'' be defined in the regulation consistent

with the definition found in section 210(c)(10)(D) of the Dodd-Frank Act?

3. Are the scopes of the definitions of ''support'' and ''related assets and liabilities'' sufficiently broad so as to cover substantially all of the forms of financial assistance and related assets and liabilities that a company may provide in support of the obligations of the subsidiary or affiliate? If the scope is not sufficiently broad, please provide specific examples if possible.

4. Is the definition of ''control'' used for purposes of determining whether an entity is a subsidiary or affiliate of the covered financial company sufficient? Is it sufficiently clear?

5. Is the definition of ''adequate protection'' appropriately consistent with the definition found elsewhere in Part 380, in particular with the definition found at 12 CFR 380.52? Is the specific mention of guarantees of the receiver as a form of adequate protection necessary to clearly signal that this is one of the options available to the receiver? If so, should 12 CFR 380.52 be amended to specifically reference guarantees of the receiver as a form of adequate protection to assure that these provisions will be interpreted in harmony?

6. Under the Proposed Rule, the Corporation is required to promptly take steps to notify contract counterparties when the covered financial company's support and related assets and liabilities have been transferred to a qualified transferee, or when the Corporation provides adequate protection with respect to the obligations of a subsidiary or affiliate of the covered financial company. Are the steps described reasonably calculated to provide notice? Is the scope of circumstances in which notice is provided appropriate?

7. Is the Proposed Rule sufficiently clear that no action is required of the receiver to preserve the enforceability of a contract as long as the conditions with respect to the transfer of support or provision of adequate protection are met?

8. Is the Proposed Rule definition of specified financial condition clear? Is the definition broad enough to cover all orderly liquidation events from the point at which the covered financial company is insolvent or in danger of default to the final liquidation and transfer of assets of the covered financial company? Is it sufficiently limited to make clear that the ability to enforce contracts is limited to events arising out of the specified financial condition clause and is not intended to affect rights or remedies arising out of defaults unrelated to the financial condition of the covered financial company or the related exercise of orderly liquidation authority?

IV. Regulatory Analysis and Procedure

A. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) (''PRA''), the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The Proposed Rule would not involve any new collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). Consequently, no information will be submitted to the Office of Management and Budget for review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act 5 U.S.C. 601, *et seq.* (RFA) requires each federal agency to prepare a final regulatory flexibility analysis in connection with the promulgation of a final rule, or certify that the final rule will not have a significant economic impact on a substantial number of small entities.[1] Pursuant to Section 605(b) of the Regulatory Flexibility Act, the FDIC certifies that the Proposed Rule will not have a significant economic impact on a substantial number of small entities.

Under regulations issued by the Small Business Administration (''SBA''), a ''small entity'' includes those firms within the ''Finance and Insurance'' sector with asset sizes that vary from $7 million or less in assets to $175 million or less in assets.[2]

The Proposed Rule will clarify rules and procedures for the liquidation of a nonviable systemically important financial company, to provide internal guidance to FDIC personnel performing the liquidation of such a company and to address any uncertainty in the financial system as to how the orderly liquidation of such a company would be conducted. As such, the Proposed Rule will not have a significant economic impact on small entities.

C. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the Proposed Rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the Proposed Rule in a simple and straightforward manner.

List of Subjects in 12 CFR Part 380

Banks, banking, Financial companies, Holding companies, Insurance companies, Mutual insurance holding companies.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amends part 380 of title 12 of the Code of Federal Regulations as follows:

PART 380—ORDERLY LIQUIDATION AUTHORITY

1. The authority citation for part 380 is revised to read as follows:

Authority: 12 U.S.C. 5383(e); 12 U.S.C. 5389; 12 U.S.C. 5390(c)(16); 12 U.S.C. 5390(s)(3); 12 U.S.C. 5390(b)(1)(C); 12 U.S.C. 5390(a)(7)(D).

2. The heading for subpart A is revised to read as follows:

Subpart A—General and Miscellaneous Provisions

Sec.

380.1 Definitions.
380.2 [Reserved]
380.3 Treatment of personal service agreements.
380.4 [Reserved]
380.5 Treatment of covered financial companies that are subsidiaries of insurance companies.
380.6 Limitation on liens on assets of covered financial companies that are insurance companies or covered subsidiaries of insurance companies.
380.7 Recoupment of compensation from senior executives and directors.
380.8 [Reserved]
380.9 Treatment of fraudulent and preferential transfers.
380.10 Calculation of maximum obligation limitation.
380.11 Treatment of mutual insurance holding companies.
380.12 Enforcement of subsidiary and affiliate contracts by the FDIC as receiver of a covered financial company.
380.13–380.19 [Reserved]

3. Revise § 380.12 to read as follows:

§ 380.12 Enforcement of certain contracts of a subsidiary or affiliate of the covered financial company.

(a) *General.* (1) Contracts of subsidiaries or affiliates of a covered

[1] *See* 5 U.S.C. 603, 604 and 605.

[2] 13 CFR 121.201.

financial company that are linked to or supported by the covered financial company shall remain in full force and effect notwithstanding any specified financial condition clause contained in such contract and no counterparty shall be entitled to terminate, accelerate, liquidate or exercise any other remedy arising solely by reason of such specified financial condition clause. The Corporation as receiver for the covered financial company and any qualified transferee shall have the power to enforce such contracts according to their terms.

(2) Notwithstanding paragraph (a)(1) of this section, if the obligations under such contract are supported by the covered financial company then such contract shall be enforceable only if—

(i) Any such support together with all related assets and liabilities are transferred to and assumed by a qualified transferee not later than 5 p.m. (eastern time) on the business day following the date of appointment of the Corporation as receiver for the covered financial company; or

(ii) If and to the extent paragraph (a)(2)(i) of this section is not satisfied, the Corporation as receiver otherwise provides adequate protection to the counterparties to such contracts with respect to the covered financial company's support of the obligations or liabilities of the subsidiary or affiliate and provides notice consistent with the requirements of paragraph (d) of this section not later than 5 p.m. (eastern time) on the business day following the date of appointment of the Corporation as receiver.

(3) The Corporation as receiver of a subsidiary of a covered financial company (including a failed insured depository institution that is a subsidiary of a covered financial company) may enforce any contract that is enforceable by the Corporation as receiver for a covered financial company under paragraphs (a)(1) and (a)(2) of this section.

(b) *Definitions.* For purposes of this part, the following terms shall have the meanings set forth below:

(1) A contract is ''linked'' to a covered financial company if it contains a specified financial condition clause that specifies the covered financial company.

(2)(i) A ''specified financial condition clause'' means any provision of any contract (whether expressly stated in the contract or incorporated by reference to any other contract, agreement or document) that permits a contract counterparty to terminate, accelerate, liquidate or exercise any other remedy under any contract to which the subsidiary or affiliate is a party or to obtain possession or exercise control over any property of the subsidiary or affiliate or affect any contractual rights of the subsidiary or affiliate directly or indirectly based upon or by reason of

(A) A change in the financial condition or the insolvency of a specified company that is a covered financial company;

(B) The appointment of the FDIC as receiver for the specified company or any actions incidental thereto including, without limitation, the filing of a petition seeking judicial action with respect to the appointment of the Corporation as receiver for the specified company and the issuance of recommendations or determinations of systemic risk;

(C) The exercise of rights or powers by the Corporation as receiver for the specified company, including, without limitation, the appointment of the Securities Investor Protection Corporation (SIPC) as trustee in the case of a specified company that is a covered broker-dealer and the exercise by SIPC of all of its rights and powers as trustee;

(D) The transfer of assets or liabilities to a bridge financial company or other qualified transferee;

(E) Any actions taken by the FDIC as receiver for the specified company to effectuate the liquidation of the specified company; or (vi) any actions taken by or on behalf of the bridge financial company to operate and terminate the bridge financial company including the dissolution, conversion, merger or termination of a bridge financial company or actions incidental or related thereto.

(ii) Without limiting the general language of paragraphs (b)(1) and (b)(2) of this section, a specified financial condition clause includes a ''walkaway clause'' as defined in 12 U.S.C. 5390(c)(8)(F)(iii) or any regulations promulgated thereunder.

(3) The term ''support'' means undertaking any of the following for the purpose of supporting the contractual obligations of a subsidiary or affiliate of a covered financial company for the benefit of a counterparty to a linked contract—

(i) To guarantee, indemnify, undertake to make any loan or advance to or on behalf of the subsidiary or affiliate;

(ii) To undertake to make capital contributions to the subsidiary or affiliate; or

(iii) To be contractually obligated to provide any other financial assistance to the subsidiary or affiliate.

(4) The term ''related assets and liabilities'' means—

(i) Any assets of the covered financial company that directly serve as collateral for the covered financial company's support (including a perfected security interest therein or equivalent under applicable law);

(ii) Any rights of offset or setoff or netting arrangements that directly arise out of or directly relate to the covered financial company's support of the obligations or liabilities of its subsidiary or affiliate; and

(iii) Any liabilities of the covered financial company that directly arise out of or directly relate to its support of the obligations or liabilities of the subsidiary or affiliate.

(5) A ''qualified transferee'' means any bridge financial company or any third party (other than a third party for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding).

(6) A ''subsidiary'' means any company which is controlled by another company at the time of, or immediately prior to, the appointment of receiver of the covered financial company.

(7) An ''affiliate'' means any company that controls, is controlled by, or is under common control with another company at the time of, or immediately prior to, the appointment of receiver of the covered financial company.

(8) The term ''control'' has the meaning given to such term under 12 U.S.C. 1841(a)(2)(A) and (B) as such law, or any successor, may be in effect at the date of the appointment of the receiver, together with any regulations promulgated thereunder then in effect.

(c) Adequate Protection.

The Corporation as receiver for a covered financial company may provide adequate protection with respect to a covered financial company's support of the obligations and liabilities of a subsidiary or an affiliate pursuant to paragraph (a)(2)(ii) of this section by any of the following means:

(1) Making a cash payment or periodic cash payments to the counterparties of the contract to the extent that the failure to cause the assignment and assumption of the covered financial company's support and related assets and liabilities causes a loss to the counterparties;

(2) Providing to the counterparties a guaranty, issued by the Corporation as receiver for the covered financial company, of the obligations of the subsidiary or affiliate of the covered financial company under the contract; or

(3) Providing relief that will result in the realization by the counterparty of the indubitable equivalent of the

covered financial company's support of such obligations or liabilities.

(d) Notice of Transfer of Support or Provision of Adequate Protection.

If the Corporation as receiver for a covered financial company transfers any support and related assets and liabilities of the covered financial company in accordance with paragraph (a)(2)(i) of this section or provides adequate protection in accordance with paragraph (a)(2)(ii) of this section, it shall promptly take steps to notify contract counterparties of such transfer or provision of adequate protection. Notice shall be given in a manner reasonably calculated to provide notification in a timely manner, including, but not limited to, notice posted on the Web site of the Corporation, the covered financial company or the subsidiary or affiliate, notice via electronic media, or notice by publication. Neither the failure to provide actual notice to any party nor the lack of actual knowledge on the part of any party shall affect the authority of the Corporation or a qualified transferee to enforce any contract or exercise any rights or powers under this section.

Dated at Washington, DC, this 20th day of March 2012.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–7051 Filed 3–26–12; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0298; Directorate Identifier 2011–NM–072–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model DHC–8–400, –401, and –402 airplanes. This proposed AD was prompted by reports of cracking of certain fuel access panels of the outer wing. This proposed AD would require an external inspection, and if necessary an internal inspection, to determine if certain fuel access panels are installed, and replacement if necessary; optional repetitive inspections for cracking of the fuel access panels, and replacement if necessary, would defer the internal inspection; and eventual replacement of affected fuel access panels with new panels. We are proposing this AD to prevent cracking of fuel access panels, which could result in arcing and ignition of fuel vapor in the outer wing fuel tank during a lightning strike.

DATES: We must receive comments on this proposed AD by May 11, 2012.

ADDRESSES: You may send comments by any of the following methods:

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

For service information identified in this proposed AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Aziz Ahmed, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue. Westbury, NY 11590; telephone (516) 228–7329; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0298; Directorate Identifier 2011–NM–072–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, has issued Canadian Airworthiness Directive CF–2011–04, dated March 8, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> [Canadian] Airworthiness Directive (AD) CF–2005–37 was issued on 11 October 2005 to address cracking of the outer wing fuel access panel, Part Number (P/N) 85714230–001. Similar cracking on an outer wing fuel access panel, P/N 85714231–001, has been reported. Further investigation revealed that certain fuel access panels may have seal grooves manufactured with non-conforming fillet radii which could lead to cracking. Cracking of the fuel access panel, if not corrected, could result in arcing and ignition of fuel vapor in the outer wing fuel tank during a lightning strike.
>
> This [TCCA] directive mandates the inspection and replacement of the affected fuel access panels.

Required actions include an external detailed inspection of the outer wing access panels for rivets of the identification plate, and an internal inspection of panels without rivets to determine if the identification plate is installed, and replacing the fuel access panel if necessary. As an option, this proposed AD would allow repetitive external detailed inspections for cracking of the fuel access panels and, replacing if necessary, until the internal inspection is done. This proposed AD would also require eventually replacing the affected fuel access panels with new fuel access panels. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin 84–57–22, Revision B, dated February 16, 2011; and Service Bulletin 84–57–23, Revision B, dated February 16, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 74 products of U.S. registry. We also estimate that it would take about 36 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $33,632 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $2,715,208, or $36,692 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2012–0298; Directorate Identifier 2011–NM–072–AD.

(a) Comments Due Date

We must receive comments by May 11, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes; certificated in any category; serial numbers 4001 and 4003 through 4106 inclusive.

(d) Subject

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

(e) Reason

This proposed AD was prompted by reports of cracking of certain fuel access panels of the outer wing. We are issuing this AD to prevent cracking of fuel access panels, which could result in arcing and ignition of fuel vapor in the outer wing fuel tank during a lightning strike.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Inspection and Replacement of Part Number (P/N) 85714231–001

Within 600 flight hours after the effective date of this AD, do an external detailed inspection of the outer wing access panels having P/N 85714231–001 to locate the rivets of the identification plates, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–57–22, Revision B, dated February 16, 2011. If the rivets of the identification plate are found, no further action is required by this paragraph for that fuel access panel. If the rivets of the identification plate cannot be found: Before further flight, do the actions specified in paragraph (g)(1) or (g)(2) of this AD.

(1) Remove fuel access panels having part number (P/N) 85714231–001 and inspect the panels to determine if the identification plate is installed, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–57–22, Revision B, dated February 16, 2011. If the identification plate is found: No further action is required by paragraph (g) of this AD for that fuel access panel.

(i) If the identification plate cannot be found, and the job detail number stamped on the underside of the access panel does not match any of those listed in table 1 of the Accomplishment Instructions of Bombardier Service Bulletin 84–57–22, Revision B, dated February 16, 2011: No further action is required for paragraph (g) of this AD for that fuel access panel.

(ii) If the identification plate cannot be found, and the job detail number stamped on the underside of the fuel access panel does match any of those specified in table 1 of the Accomplishment Instructions of Bombardier Service Bulletin 84–57–22, Revision B, dated February 16, 2011: Before further flight, replace the fuel access panel with a new fuel access panel having P/N 85714231–003, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–57–22, Revision B, dated February 16, 2011.

(2) Do an external detailed inspection on fuel access panels having P/N 85714231–001 for cracking, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–57–22, Revision B, dated February 16, 2011. If no cracking is found: Repeat the inspection thereafter at intervals not to exceed 600 flight hours until the replacement specified in paragraph (g)(2)(i)

of this AD, or the inspection specified in paragraph (g)(1) of this AD, is done.

(i) If the fuel access panel is found cracked during any inspection required by this AD: Before further flight, replace the fuel access panel with a new fuel access panel having P/N 85714231–003, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–57–22, Revision B, dated February 16, 2011.

(ii) Within 6,000 flight hours after the initial inspection required by paragraph (g)(2) of this AD, do the actions required in paragraph (g)(1) of this AD, unless the replacement required by paragraph (g)(2)(i) of this AD is done.

(h) Inspection and Replacement of P/N 85714232–001

Within 1,200 flight hours after the effective date of this AD, do an external detailed inspection of the outer wing access panels having P/N 85714232–001 to locate the rivets of the identification plates, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–57–23, Revision B, dated February 16, 2011. If the rivets of the identification plate are found: No further action is required by this paragraph for that fuel access panel. If the rivets of the identification plate cannot be found: Before further flight, do the actions in paragraph (h)(1) or (h)(2) of this AD.

(1) Remove fuel access panels having P/N 85714232–001 and inspect the panels to determine if the identification plate is installed, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–57–23, Revision B, dated February 16, 2011. If the identification plate is found: No further action is required by paragraph (h) of this AD for that fuel access panel.

(i) If the identification plate cannot be found, and the job detail number stamped on the underside of the access panel does not match any of those specified in table 1 of the Accomplishment Instructions of Bombardier Service Bulletin 84–57–23, Revision B, dated February 16, 2011: No further action is required by paragraph (h) of this AD for that fuel access panel.

(ii) If the identification plate cannot be found, and the job detail number stamped on the underside of the fuel access panel does match any of those specified in table 1 of the Accomplishment Instructions of Bombardier Service Bulletin 84–57–23, Revision B, dated February 16, 2011: Before further flight, replace the fuel access panel with a new fuel access panel having P/N 85714232–003, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–57–23, Revision B, dated February 16, 2011.

(2) Do an external detailed inspection on fuel access panels having P/N 85714232–001 for cracking, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–57–23, Revision B, dated February 16, 2011. If no cracking is found: Repeat the inspection thereafter at intervals not to exceed 1,200 flight hours until the replacement specified in paragraph (h)(2)(i) of this AD, or the inspection specified by paragraph (h)(1) of this AD is done.

(i) If the fuel access panel is found cracked during any inspection required by this AD: Before further flight, replace the fuel access panel with a new fuel access panel having P/N 85714232–003, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–57–23, Revision B, dated February 16, 2011.

(ii) Within 12,000 flight hours after the initial inspection required by paragraph (h)(2) of this AD, do the actions required by paragraph (h)(1) of this AD, unless the replacement required by paragraph (h)(2)(i) of this AD is done.

(i) Parts Installation

As of the effective date of this AD, no person may install a fuel access panel having P/N 85714231–001 and a job detail number listed in table 1 of the Accomplishment Instructions of Bombardier Service Bulletin 84–57–22, Revision B, dated February 16, 2011; or having P/N 85714232–001 and a job detail number listed in table 1 of the Accomplishment Instructions of Bombardier Service Bulletin 84–57–23, Revision B, dated February 16, 2011; on any airplane.

(j) Credit for Previous Actions

This paragraph provides credit for inspections and fuel access panel replacements required by this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–57–22, Revision A, dated December 9, 2010; or Bombardier Service Bulletin 84–57–23, Revision A, dated December 9, 2010.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to Attn: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(l) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2011–04, dated March 8, 2011, and the following service information, for related information.

(1) Bombardier Service Bulletin 84–57–22, Revision B, dated February 16, 2011.

(2) Bombardier Service Bulletin 84–57–23, Revision B, dated February 16, 2011.

Issued in Renton, Washington on March 16, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–7357 Filed 3–26–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0299; Directorate Identifier 2011–NM–029–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Boeing Model 747–100, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400F, and 747SR series airplanes. This proposed AD was prompted by reports of broken and damaged latch pin retention bolts of the main deck side cargo door (MDSCD), latch pin migration, and broken latch pin fittings. This proposed AD would require various repetitive inspections of the MDSCD latch pin fittings, measuring the latch pin, and related investigative and corrective actions if necessary; and modifying the latch pin fittings and installing new latch pins and latch pin fasteners. We are proposing this AD to prevent loss of the cargo door and rapid depressurization of the airplane.

DATES: We must receive comments on this proposed AD by May 11, 2012.

ADDRESSES: You may send comments by any of the following methods:

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; phone: 206–544–5000, extension 1; fax: 206–766–5680; email: *me.boecom@boeing.com;* Internet: *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6432; fax: 425–917–6590; email: *Bill.Ashforth@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0299; Directorate Identifier 2011–NM–029–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received damage reports on MDSCD latch pin fittings. Six operators have reported that broken latch pin retention bolts were found on eight airplanes. On one airplane that had accumulated 101,609 total flight hours and 12,862 total flight cycles, the retention bolts on both the #9 and #10 latch pin fittings were broken. Latch pin #10 had migrated aft and was not engaging the latch cam. On another airplane that had accumulated 33,983 total flight hours and 4,723 total flight cycles, the retention bolt on the #10 latch pin fitting was broken and the #9 latch pin was damaged. On another airplane that had accumulated 67,188 total flight hours and 14,440 total flight cycles, the retention bolt for the #10 latch pin fitting was completely sheared, which allowed the latch pin to migrate aft until it no longer engaged the door latch cam. On four airplanes, only the retention bolt on the #10 latch pin fitting was found to be broken. On one airplane, the retention bolt on the #10 latch pin fitting was damaged. A loose, broken, or missing retention bolt can result in a migrated latch pin, which can become disengaged from the cargo door latch cams and lead to increased loads in the adjacent latch pin fittings and latch cams. Increased loads can cause damage to the cargo door latch mechanism and/or the lower sill structure. The migration of two or more latch pins and subsequent failure of the latch mechanism or lower sill structure can result in the inability of the cargo door to carry limit loads. This condition, if not corrected, could result in the loss of the cargo door and rapid depressurization of the airplane.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2012–0299.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require repetitive detailed inspections of the 10 MDSCD latch pin fittings to detect loose, broken, missing, or damaged retention bolts and nuts; measuring latch pin diameter; and related investigative and corrective actions, if necessary. The related investigative actions include a torque check of the latch pin retention bolt to determine if the bolt is broken; and checking the latch pin for migration and, if necessary, a detailed inspection for damage of the latch pin fitting and the adjacent (forward and aft) latch pin fittings, the door cutout structure, the affected latch cam and the adjacent latch cams, and the door structure. The corrective actions include replacing the latch pin, the retention bolt, and related parts with a new latch pin, retention bolt, and related parts; and repairing of any damage to the adjacent door, door cutout structure, and latch cams.

This proposed AD would also require modifying the MDSCD latch pin fittings, replacing the latch pins with new latch pins, and replacing the latch pin retention fasteners with new latch pin retention fasteners. In addition, this proposed AD would require post-modification/replacement repetitive detailed inspections of the MDSCD latch pin fittings to detect damaged latch pins, and loose, broken, or missing retention bolts and nuts; measuring the latch pin diameter; and related investigative and corrective actions if necessary. The related investigative actions include checking the latch pin for migration and, if necessary, a detailed inspection for damage of the latch pin fitting and the adjacent latch pin fittings, the door cutout structure, the affected latch cam and the adjacent latch cams on the door, and the door structure. The corrective actions include replacing the latch pin, the retention bolt, and related parts with a new latch pin, retention bolt, and related parts; or repairing any damage.

Differences Between the Proposed AD and the Service Information

Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011. as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

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

Costs of Compliance

We estimate that this proposed AD will affect 77 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed inspection, including torque check.	4 work-hours × $85 per hour = $340 per inspection cycle.	$0	$340 per inspection cycle	$26,180 per inspection cycle.
Modification	11 work-hours × $85 per hour = $935.	$5,530	$6,465	$497,805.
Post-modification detailed inspection.	2 work-hours × $85 per hour = $170 per inspection cycle.	$0	$170 per inspection cycle	$13,090 per inspection cycle.

We estimate the following costs to do necessary repairs and replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these repairs.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair/Replacements (Groups 1 and 2 airplanes)	7 work-hours × $85 per hour = $595	$11,478	$12,073
Repair/Replacements (Group 3 airplanes)	7 work-hours × $85 per hour = $595	12,254	12,849

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2012–0299; Directorate Identifier 2011–NM–029–AD.

(a) Comments Due Date

We must receive comments by May 11, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–100, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400F, and 747SR series airplanes; certificated in any category; as identified in Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 52, Doors.

(e) Unsafe Condition

This AD was prompted by reports of broken and damaged latch pin retention bolts of the main deck side cargo door (MDSCD), latch pin migration, and broken latch pin fittings. We are issuing this AD to prevent loss of the cargo door and rapid depressurization of the airplane.

(f) Compliance

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

(g) Inspection and Corrective Action

At the applicable compliance time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December

12, 2011, except as provided by paragraph (j)(2) of this AD: Do a detailed inspection of the 10 MDSCD latch pin fittings to detect loose, broken, damaged, or missing retention bolts and nuts; measure the latch pin diameter; and do all applicable related investigative and corrective actions, except as required by paragraph (j)(1) of this AD; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011. Do all applicable related investigative and corrective actions before further flight. Repeat the inspection thereafter at intervals not to exceed those specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011.

(h) Modification of Latch Pin Fittings and Replacement of Latch Pins and Latch Pin Retention Fasteners

At the time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011, except as provided by paragraph (j)(2) of this AD: Modify the 10 MDSCD latch pin fittings, replace the latch pins with new latch pins, and replace the latch pin retention fasteners with new latch pin retention fasteners, except as required by paragraph (j)(1) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011. Accomplishment of the actions in paragraph (h) of this AD terminates the inspection required in paragraph (g) of this AD.

(i) Post-Modification Inspection and Corrective Action

At the applicable compliance time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011, except as provided by paragraph (j)(2) of this AD: Do a detailed inspection of the 10 MDSCD latch pin fittings to detect loose, broken, damaged, or missing retention bolts and nuts; measure the latch pin diameter; and do all applicable related investigative and corrective actions, except as required by paragraph (j)(1) of this AD; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011. Do the applicable related investigative and corrective actions before further flight. Repeat the inspection thereafter at intervals not to exceed those specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011.

(j) Exceptions to Service Bulletin Specifications

(1) If any damage is found during any inspection required by this AD, and Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011, specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(2) Where Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011, specifies a compliance time relative to the issue date of that service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(k) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 747–52A2294, dated July 8, 2010.

(l) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(m) Related Information

(1) For more information about this AD, contact Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6432; fax: 425–917–6590; email: *Bill.Ashforth@faa.gov*.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; phone: 206–544–5000, extension 1; fax: 206–766–5680; email: *me.boecom@boeing.com;* Internet: *https://www.myboeingfleet.com*. You may also review the referenced service information in the docket at *www.regulations.gov* (refer to Docket No. FAA–2012–0299). You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, the FAA, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 19, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–7283 Filed 3–26–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0300; Directorate Identifier 2011–NM–276–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes. This proposed AD was prompted by a design review which revealed the absence of electrical insulation material between a wing or integral center wing tank (ICWT) fuel quantity indication system (FQIS) probe and the bottom of the tank structure. This condition, if not corrected, could, under certain conditions, result in an ignition source in the tank vapor space, which could result in a fuel tank explosion and consequent loss of the airplane. This proposed AD would require, for all airplanes, applying sealant below the FQIS probes in the wing tanks; and for certain airplanes, applying sealant below the FQIS probes in the ICWT. This proposed AD would also require revising the aircraft maintenance program by revising the fuel airworthiness limitations and incorporating critical design configuration control limitations (CDCCLs). We are proposing this AD to prevent an ignition source in the tank vapor space, which could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by May 11, 2012.

ADDRESSES: You may send comments by any of the following methods:

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

For service information identified in this proposed AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; email *technicalservices.fokkerservices@stork.com*; Internet *http://www.myfokkerfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0300; Directorate Identifier 2011–NM–276–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0227, dated December 6, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> * * * [T]he FAA published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) published Interim Policy INT/POL/25/12. The design review conducted by Fokker Services on the Fokker 70 and Fokker 100 in response to these regulations revealed that the absence of electrical insulation material between a wing or Integral Center Wing Tank (ICWT) Fuel Quantity Indication System (FQIS) probe and the bottom of the tank structure could, under certain conditions, result in an ignition source in the tank vapour space.
>
> This condition, if not corrected, could result in a fuel tank explosion and consequent loss of the aeroplane.
>
> For the reasons described above, this [EASA] AD requires the application of sealant below the FQIS probes in the wing tanks and below the FQIS probes in the ICWT, as applicable to aeroplane configuration. * * *

The corrective actions also include revising the aircraft maintenance program by revising the fuel airworthiness limitations and incorporating CDCCLs. You may obtain further information by examining the MCAI in the AD docket.

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (66 FR 23086, May 7, 2001) (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 (66 FR 23086, May 7, 2001) requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs

do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88 (66 FR 23086, May 7, 2001). (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

Fokker Services B.V. has issued Fokker Service Bulletin SBF100–28–067, dated September 2, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 4 products of U.S. registry. We also estimate that it would take about 8 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $2,720, or $680 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Fokker Services B.V.: Docket No. FAA–2012–0300; Directorate Identifier 2011–NM–276–AD.

(a) Comments Due Date

We must receive comments by May 11, 2012.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes, certificated in any category, all serial numbers.

(2) This AD requires revisions to certain operator maintenance documents to include new actions (e.g., inspections) and/or Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and/or CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j)(1) of this AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane.

(d) Subject

Air Transport Association (ATA) of America Code 28: Fuel.

(e) Reason

This AD was prompted by a design review which revealed the absence of electrical insulation material between a wing or integral center wing tank (ICWT) fuel quantity indication system (FQIS) probe and the bottom of the tank structure. We are issuing this AD to prevent an ignition source in the tank vapor space, which could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Apply Sealant

Do the actions specified in paragraphs (g)(1) and (g)(2) of this AD, as applicable.

(1) For all airplanes: At a scheduled opening of the fuel tanks, but not later than 84 months after the effective date of this AD, apply sealant below the probes in the wing tanks, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–28–067, dated September 2, 2011.

(2) For airplanes having serial numbers 11442 through 11585 inclusive, and equipped with an ICWT: At a scheduled opening of the fuel tanks, but not later than 84 months after the effective date of this AD, apply sealant below the probes in the ICWT, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–28–067, dated September 2, 2011.

(h) Revise Maintenance Program

Before further flight after doing any action required by paragraph (g) of this AD, revise the aircraft maintenance program by incorporating the fuel airworthiness limitation and the CDCCL specified in paragraph 1.L.(1)(c) of Fokker Service Bulletin SBF100–28–067, dated September 2, 2011.

(i) No Alternative Actions, Intervals, and/or CDCCLs

After accomplishing the revision required by paragraph (h) of this AD, no alternative actions (e.g., inspections), intervals, or CDCCLs may be used unless the actions, intervals, or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 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. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(k) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2011–0227, dated December 6, 2011; and Fokker Service Bulletin SBF100–28–067, dated September 2, 2011; for related information.

Issued in Renton, Washington, on March 8, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–7361 Filed 3–26–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 148

[USCBP–2012–0008]

RIN 1515–AD76

Members of a Family for Purpose of Filing a CBP Family Declaration

AGENCIES: U.S. Customs and Border Protection, DHS; Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: U.S. Customs and Border Protection (CBP) is proposing to revise its regulations regarding U.S. returning residents who are eligible to file a single customs declaration for members of a family traveling together upon arrival in the United States. Specifically, CBP is proposing to expand the definition of the term ''members of a family residing in one household'' to allow more U.S. returning residents to file a family customs declaration for articles acquired abroad. CBP anticipates that this proposed change will reduce the amount of paperwork that CBP officers would need to review during inspection and, therefore, facilitate passenger processing. CBP believes that this proposed change would more accurately reflect relationships between members of the public who are traveling together as a family.

DATES: Written comments must be received on or before May 29, 2012.

ADDRESSES: You may submit comments, identified by *docket number,* by *one* of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov.* Follow the instructions for submitting comments via Docket No. USCBP 2012–0008.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, U.S. Customs and Border Protection, 799 9th Street NW., (Mint Annex), Washington, DC 20229–1179.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Sophie Galvan, Program Manager, Trusted Traveler Programs, Office of Field Operations, (202) 344–2292.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most

assistance to CBP in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that supports such recommended change. See **ADDRESSES** above for information on how to submit comments.

Background

Individuals entering the United States must declare all articles acquired abroad to CBP at the port of first arrival in the United States. Returning residents and nonresidents arriving in the United States must make a declaration, either oral or written, of the merchandise they are importing and must pay duty on the merchandise unless specifically exempted by law. *See* 19 U.S.C. 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)). Unless an oral declaration is accepted, a person arriving in the United States must complete a written declaration on CBP Form 6059–B and present the form to the CBP officer at inspection.

Personal Exemptions

Subheadings 9804.00.65, 9804.00.70 and 9804.00.72, Chapter 98, HTSUS, extend, under prescribed circumstances, duty exemptions to certain articles imported by or for the account of any person arriving in the United States who is a returning resident of the United States. The duty exemptions (also known as personal exemptions) set forth in these tariff schedule subheadings specify the aggregate fair retail value of merchandise that a returning resident may bring back to the United States without having to pay duty. As authorized by General Note 3(i), HTSUS, part 148 of title 19 of the Code of Federal Regulations (19 CFR) (CBP regulations) sets forth regulations pertaining to personal declarations and exemptions under subchapter IV (Personal Exemptions Extended to Residents and Nonresidents), Chapter 98, HTSUS.

Family Declarations and Grouping of Exemptions

When members of a family residing in one household travel together on their return to the United States, a responsible family member may make a joint declaration, either oral or written, for all members of the family traveling together. This joint family declaration is contingent upon the value of the articles acquired abroad not exceeding the total amount of the exemption to which the family group is entitled. *See* 19 CFR 148.14. CBP regulations also allow for the aggregation, or grouping, of exemptions by members of a family for articles acquired abroad and for the aggregation of duty allowances for household goods by members of a family. *See* 19 CFR 148.14, 148.34, and 148.103. For example, when members of a family residing in one household travel together on their return to the United States, the $800 or $1,600 exemption, which each family member may be entitled to claim, may be grouped together without regard to which member of the family is the owner of the articles.[1] 19 CFR 148.34.

Under the current regulations relating to family declarations, a family may file a single, aggregated customs declaration only if they satisfy the definition of ''members of a family residing in one household.'' *See* 19 CFR 148.34(b) and 148.103(b). This definition requires that members of a family traveling together who return to the United States be related ''by blood, marriage, or adoption;'' live together in the same household at their last permanent residence; and intend to live in the same household after returning to the United States. CBP does not believe that the current definition encompasses other relationships where members of the public travel together as a family. CBP believes that the definition unnecessarily limits the number of individuals who may file a family customs declaration for articles acquired abroad.

Proposed Changes to Family Customs Declarations

This NPRM proposes to expand the definition of ''members of a family residing in one household'' for purposes of filing a customs declaration for returning U.S. residents to more accurately reflect relationships among members of the public who are traveling together as a family.

By expanding the definition of ''members of a family residing in one household,'' CBP anticipates that the number of declarations (CBP Form 6059–Bs) will be reduced, which would make the processing of passengers by CBP officers more streamlined and efficient. Additionally, CBP believes the traveling public will benefit because more members of a family traveling together can aggregate their individual personal duty exemptions upon their return to the United States.

Under this NPRM, CBP is proposing to include foster children, stepchildren, half-siblings, legal wards, other dependents, and individuals with an *in loco parentis* or guardianship relationship within the definition of ''members of a family residing in one household.'' CBP also is proposing that the definition include two adult individuals in a committed relationship wherein the partners share financial assets and obligations, and are not married to, or a partner of, anyone else, including, but not limited to, long-time companions, and couples in civil unions or domestic partnerships. This NPRM proposes to add these relationships to the definition of ''members of a family residing in one household'' and refer to them as ''domestic relationships.'' The proposed term ''domestic relationship'' would not extend to roommates or other cohabitants not otherwise meeting the above definition. Additionally, the proposed changes would not alter the residency requirements that, in order to file a family declaration, members of a family residing in one household must live together in one household at their last permanent residence and intend to live together in one household after their arrival in the United States.

Other Non-Substantive, Changes to the Regulations

This proposal would also remove outdated references to ''resident servants'' of a family and state instead that individuals employed by the household but not related by blood, marriage, domestic relationship, or adoption cannot be included in the family declaration.

Finally, this NPRM proposes to remove the phrase ''regardless of age'' where it currently appears in the introductory text of §§ 148.34(b) and 148.103(b), because it would not be consistent with the proposed definition of ''domestic relationships,'' which is limited to adults.

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule

[1] A group exemption, however, cannot include an exemption for a family member who is not entitled to it in his own right, nor can a group exemption apply to any property of such a member. For example, the exemption of a family member who has not attained the age of 21 regarding the number of permitted duty-free liters of alcoholic beverages cannot be applied under the group exemption.

has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has reviewed this rule.

Regulatory Flexibility Act

This section examines the impact of the rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 603), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), which requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (i.e., small business, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for any proposed rule.

This rule directly regulates individuals and families, and these are not considered small entities. Therefore, CBP certifies that this rule will not have a significant economic impact on a substantial number of small entities. CBP welcomes any comments on this conclusion.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by Office of Management and Budget (OMB). The information collected under 19 CFR part 148 is included under OMB control number 1651–0009. There are no new collections of information proposed in this document. The estimated burden hours related to the completion of the CBP Form 6059–B (Customs Declaration) for OMB control number 1651–0009 by members of the public traveling by air and sea have been updated below to reflect the slight decrease in the number of Customs Declarations that are submitted if the definition of a ''member of a family residing in one household'' in this proposal is adopted, as follows

Estimated Number of Respondents (Travelers): 1,100,000.

Estimated Time per Response: 4 minutes.

Estimated Total Responses: −1,100,000.

Estimated Total Annual Burden Hours: −2,600.

The Customs Declaration (CBP Form 6059B) is due to expire in February 2014. CBP Form 6059B can be seen on the following Web site: *http://www.cbp.gov/xp/cgov/travel/vacation/sample_declaration_form.xml*. CBP seeks public comment as to as to whether and how the Customs Declaration form could more clearly inform U.S. residents of the definition of family for the purposes of filling out a customs declaration.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1) pertaining to the authority of the Secretary of the Treasury (or that of his or her delegate) to approve regulations pertaining to certain customs revenue functions.

List of Subjects in 19 CFR Part 148

Customs duties and inspection, Declarations, Reporting and recordkeeping requirements, Taxes.

Amendments to the CBP Regulations

For the reasons set forth above, part 148 of the CBP regulations (19 CFR part 148) is proposed to be amended as set forth below.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority for part 148 continues to read as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States);

* * * * *

§ 148.14 [Amended]

2. Section 148.14 is amended by removing the last sentence and adding in its place the sentence ''Individuals who are employed by the household but not related by blood, marriage, domestic relationship, or adoption will not be included in the family declaration.''

3. In § 148.34:

a. Paragraph (a) is amended by removing the last sentence and adding in its place the sentence ''No exemptions allowable to individuals employed by the household and accompanying the family but not related by blood, marriage, domestic relationship, or adoption will be included in the family grouping.''; and

b. By revising paragraph (b) and adding a new paragraph (c).

The additions and revisions to § 148.34 are to read as follows:

§ 148.34 Family grouping of exemptions for articles acquired abroad.

* * * * *

(b) *Members of a family residing in one household.* ''Members of a family residing in one household'' includes all persons who:

(1) Are related by blood, marriage, domestic relationship, or adoption;

(2) Lived together in one household at their last permanent residence; and

(3) Intend to live in one household after their arrival in the United States.

(c) *Domestic relationship.* As used in paragraph (b)(1), the term ''domestic relationship'' includes foster children, stepchildren, half-siblings, legal wards, other dependents, individuals with an *in loco parentis* or guardianship relationship, and two adults who are in a committed relationship including, but not limited to, long-time companions, and couples in civil unions, or domestic partnerships, wherein the partners share financial assets and obligations, and are not married to, or a partner of, anyone else. The term ''domestic relationship'' does not extend to roommates or other cohabitants not otherwise meeting this definition.

4. Section 148.103(b) is revised to read as follows:

§ 148.103 Family grouping of allowances.

* * * * *

(b) *Members of a family residing in one household.* ''Members of a family residing in one household'' includes all persons who:

(1) Are related by blood, marriage, domestic relationship (as defined in § 148.34(c)), or adoption;

(2) Lived together in one household at their last permanent residence; and

(3) Intend to live in one household after their arrival in the United States.

Allen Gina,

Acting Commissioner, U.S. Customs and Border Protection.

Approved: March 20, 2012.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 2012–7122 Filed 3–26–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–168745–03]

Guidance Regarding Deduction and Capitalization of Expenditures Related to Tangible Property; Correction

AGENCY: Internal Revenue Service (IRS).

ACTION: Notice of proposed rulemaking; correcting amendment.

SUMMARY: This document contains corrections to a notice of proposed

rulemaking (REG–168745–03), which was published in the **Federal Register** relating to sections 162, and 263, providing guidance on the deduction and capitalization of expenditures related to tangible property.

DATES: *Effective Date:* March 27, 2012 and is applicable on or after December 27, 2011.

FOR FURTHER INFORMATION CONTACT: Merrill Feldstein at (202) 622–4950, not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of these corrections are under sections 162, 167, 168, and 263 of the Internal Revenue Code.

Need for Correction

As published on December 27, 2011 (76 FR 81128), the notice of proposed rulemaking (REG–168745–03), contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–168745–03), which were the subject of FR. Doc. 2011–32024, is corrected as follows:

List of Subjects in 26 CFR part 1

Income taxes, Reporting and recordkeeping requirements.

Accordingly, 26 CFR part 1 is corrected my making the following correcting amendment:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.162–3 is corrected to read as follows:

§ 1.162–3 [Corrected]

§ 1.162–3 Materials and supplies.

[The text of the proposed amendments to § 1.163–3 (a) through (j) is the same as the text of § 1.163–3T(a) through (j) published elsewhere in this issue of the **Federal Register**.]

Guy R. Traynor,

Federal Register Liaison, Publications and Regulations, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.

[FR Doc. 2012–7267 Filed 3–26–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–168745–03]

RIN 1545–BE18

Guidance Regarding Deduction and Capitalization of Expenditures Related to Tangible Property; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; Correction.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG–168745–03), which was published in the **Federal Register** relating to sections 162, and 263 providing guidance on the deduction and capitalization of expenditures related to tangible property.

DATES: Effective Date: March 27, 2012.

FOR FURTHER INFORMATION CONTACT: Merrill D. Feldstein at (202) 622–4950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of these corrections is under sections 162, 167, 168, and 263 of the Internal Revenue Code.

Need for Correction

As published on December 27, 2011 (76 FR 81128), the notice of proposed rulemaking (REG–168745–03), contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–168745–03), which were the subject of FR. Doc. 2011–32024, is corrected as follows:

1. On page 81128, column one, in the preamble under the caption **DATES**, lines one, two and three, the language ''Written and/or electronic comments and requests for a public hearing must be received by March 26,'' is corrected to read ''Written and/or electronic comments must be received by March 26,''.

2. On page 81128, column one, line 6 under the caption **DATES,** the language ''hearing scheduled for April 4, 2012 at'' is corrected to read ''hearing scheduled for May 9, 2012 at''.

3. On page 81128, column three, line two of the second paragraph under the caption ''Comments and Public Hearing'' the language ''for April 4, 2012, beginning at 10 a.m.'' is corrected to read ''for May 9, 2012, beginning at 10 a.m.''.

4. On page 81128, column three, line three in the preamble under the caption ''Drafting Information'', the language ''Katherine Reed, Office of the Associate'' is corrected to read ''Kathleen Reed, Office of the Associate''.

5. On page 81130, column one, Par. 11., item one is redesignated as item 3 and the language ''Revising paragraphs (a) through (l)(1); and'' is corrected to read as ''Revising paragraphs (a) through (h) and revising paragraphs (j) through (l)(1).''

6. On page 81130, column one, under Par. 11. instructions, newly redesignated item one reads as ''Removing paragraphs (l), (l)(1), (l)(2) and (l)(3) and redesignating paragraphs (k), (k)(1), (k)(2), and (k)(3) as paragraphs (l), (l)(1), (l)(2) and (l)(3) respectively.''

7. On page 81130, column one, under Par. 11. instructions, newly redesignated paragraph item 2 is corrected to read as ''Redesignating paragraph (j) as paragraph (k) and redesignating paragraph (i) as paragraph (j), and adding a new paragraph (i).''

8. On page 81130, column one, under Par. 11. instructions, newly redesignated item 4 reads as ''Adding paragraph (m).''

Guy R. Traynor,

Federal Register Liaison, Publications and Regulations, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.

[FR Doc. 2012–7266 Filed 3–26–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 5

[Docket No. TTB–2012–0001; Notice No. 126]

RIN 1513–AB91

Standards of Identity for Pisco and Cognac

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

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Alcohol and Tobacco Tax and Trade Bureau proposes to amend its regulations setting forth the standards of identity for distilled spirits to include Pisco as a

type of brandy that must be manufactured in accordance with the laws and regulations of either Peru or Chile, as appropriate, governing the manufacture of those products. This change will remove ''Pisco brandy'' from the list of examples of geographical designations in the distilled spirits standards of identity. This document also includes a technical correction to remove ''Cognac'' from the same list of examples. These changes will provide greater clarity in distilled spirits labeling.

DATES: Comments must be received on or before May 29, 2012.

ADDRESSES: You may send comments on this document to one of the following addresses:

- *http://www.regulations.gov* (via the online comment form for this document as posted within Docket No. TTB–2012–0001 at ''Regulations.gov,'' the Federal e-rulemaking portal);
- *Mail:* Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or
- *Hand delivery/courier in lieu of mail:* Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200–E, Washington, DC 20005.

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

You may view copies of this document, selected supporting materials, and any comments we receive about this proposal at *http://www.regulations.gov* within Docket No. TTB–2012–0001. A direct link to this docket is posted on the TTB Web site at *http://www.ttb.gov/spirits/spirits-rulemaking.shtml* under Notice No. 126. You also may view copies of this document, all related supporting materials, and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street NW., Washington, DC 20005. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Karen E. Welch, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; telephone 202–453–1039, ext. 046; email *ITD@ttb.gov.*

SUPPLEMENTARY INFORMATION:

Background

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), codified in the United States Code at 27 U.S.C. 205(e), authorizes the Secretary of the Treasury (Secretary) to prescribe regulations relating to the packaging, marking, branding, labeling, and size and fill of containers of alcohol beverages that will prohibit consumer deception and provide the consumer with adequate information as to the identity and quality of the product. Section 105(e) of the FAA Act also generally requires bottlers and importers of alcohol beverages to obtain certificates of label approval prior to bottling or importing alcohol beverages for sale in interstate commerce. Regulations implementing those provisions of section 105(e) as they relate to distilled spirits are set forth in part 5 of title 27 of the Code of Federal Regulations (27 CFR part 5). The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated January 21, 2003, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Certificates of Label Approval

TTB's regulations prohibit the release of bottled distilled spirits from customs custody for consumption unless an approved Certificate of Label Approval (COLA) covering the product has been deposited with the appropriate Customs officer at the port of entry. See 27 CFR 5.51. The TTB regulations also generally prohibit the bottling or removal from a plant of distilled spirits unless the proprietor possesses a COLA covering the labels on the bottle. See 27 CFR 5.55.

Classes and Types of Spirits

The TTB labeling regulations require that the class and type of distilled spirits appear on the product's brand label. See 27 CFR 5.32(a)(2) and 5.35. Those regulations provide that the class and type must be stated in conformity with § 5.22 of the TTB regulations (27 CFR 5.22) if defined therein. Otherwise, the product must be designated in accordance with trade and consumer understanding thereof, or, if no such understanding exists, by a distinctive or fanciful name, and in either case (with limited exceptions), followed by a truthful and adequate statement of composition.

Section 5.22 establishes standards of identity for distilled spirits products and categorizes these products according to various classes and types. As used in § 5.22, the term ''class'' refers to a general category of spirits, such as ''whisky'' or ''brandy.'' Currently, there are 12 different classes of distilled spirits recognized in § 5.22, including whisky, rum, and brandy. The term ''type'' refers to a subcategory within a class of spirits. For example, ''Cognac'' is a type of brandy, and ''Canadian whisky'' is a type of whisky.

Brandy and Pisco

Brandy is Class 4 in the standards of identity, where it is defined in § 5.22(d) as ''an alcoholic distillate from the fermented juice, mash, or wine of fruit, or from the residue thereof, produced at less than 190° proof in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to the product, and bottled at not less than 80° proof.'' ''Pisco'' is a term recognized by both the governments of Peru and Chile as a designation for a distilled spirits product made from grapes. However, ''Pisco brandy'' is not currently listed as a type of brandy in Class 4. Rather, it is provided in Class 11, at § 5.22(k)(3), as an example of a geographical name that is not a name for a distinctive type of distilled spirits, and that has not become generic.

International Agreements

Pursuant to the United States–Peru Trade Promotion Agreement, the United States recognized Pisco Perú as a distinctive product of Peru (Article 2.12(2) of the Agreement). Accordingly, the United States agreed not to permit the sale of any product as Pisco Perú unless it has been manufactured in Peru in accordance with the laws and regulations of Peru governing Pisco.

In addition, pursuant to the United States–Chile Free Trade Agreement, the United States recognized Pisco Chileno (Chilean Pisco) as a distinctive product of Chile (Article 3.15(2) of the Agreement). Accordingly, the United States agreed not to permit the sale of any product as Pisco Chileno (Chilean Pisco) unless it has been manufactured in Chile in accordance with the laws and regulations of Chile governing the manufacture of Pisco.

In like manner, Peru and Chile agreed, respectively, to recognize Bourbon Whiskey and Tennessee Whiskey (which is defined in both Agreements as a straight Bourbon Whiskey authorized to be produced only in the State of Tennessee), as distinctive products of the United States, and not to permit the sale of any product as Bourbon Whiskey or Tennessee Whiskey unless it has been manufactured in the United States in accordance with the laws and

regulations of the United States governing the manufacture of Bourbon Whiskey and Tennessee Whiskey. (TTB notes that there are alternative spellings for the same term—''whisky'' in the TTB regulations in 27 CFR part 5 and ''whiskey'' in the Agreements with Peru and Chile.)

Pisco Production

''The Oxford Companion to Wine'' (Jancis Robinson, ed., Oxford University Press, 2d ed., 2001, p. 536) reports that Spanish colonists began producing aguardiente (grape spirits) in both Peru and Chile since the sixteenth century, in addition to describing the spirits produced in the area near the town of Pisco in Peru. Further, ''The Oxford Companion to Wine'' says ''Pisco'' is an aromatic brandy made in Peru, Chile, and Bolivia, mainly from Moscatel (muscat) grapes.'' According to ''Alexis Lichine's Encyclopedia of Wines and Spirits'' (Alexis Lichine, ed., 5th ed., Alfred A. Knopf, Inc., 1987), ''Pisco brandy'' is brandy distilled from Muscat wine in Peru, Chile, Argentina, and Bolivia. Peru and Chile have promulgated standards for the production of Pisco, which, under both countries' respective regulations, is distilled from grapes that were grown in delimited geographical areas.

TTB Regulatory Proposal

After reviewing the standards of identity in 27 CFR part 5, TTB's COLA database, and the laws and regulations of Peru and Chile, TTB has determined that amending § 5.22 is appropriate to clarify the status of Pisco under the standards of identity.

TTB believes that Pisco generally meets the U.S. standard for brandy and should be classified as a type of brandy. TTB also believes that evidence suggests that the generally recognized geographical limits of the Pisco-producing areas do not extend beyond the boundaries of Chile and Peru. The wine and spirits authorities cited above indicate that Pisco production is not associated with any areas outside of South America. COLAs naming ''Pisco'' as the brand name or fanciful name of a distilled spirits product are almost exclusively for products from Chile and Peru. TTB could not locate any COLAs naming ''Pisco'' as the brand name or fanciful name for any products from Argentina, or from any other country in South America with the exception of Peru, Chile, and Bolivia. COLAs for products from Bolivia that name ''Pisco'' as the brand name or fanciful name also use the term ''Singani.'' ''The Oxford Companion to Wine'' defines ''Singani'' as an ''aromatic grape-based spirit rather like pisco in that it is high in terpenes and made under a strictly controlled regime, principally from Muscat of Alexandria grapes'' and a specialty of Bolivia (Robinson, p. 638). Bolivia maintains standards for Singani production in Bolivia, but does not have standards for Pisco production.

Therefore, TTB proposes to amend the standard of identity in § 5.22(d) by adding Pisco as a type of brandy that is manufactured in Peru or Chile in compliance with the laws of the country of production regulating the manufacture of Pisco. The proposed amendment also recognizes the phrases ''Pisco Perú'' (with or without the diacritic mark, i.e., ''Pisco Perú'' or ''Pisco Peru''), ''Pisco Chileno,'' and ''Chilean Pisco,'' as equivalent class and type names of the product, to reflect the provisions of the trade agreements. Further, if Pisco is recognized as a type of brandy, persons who distribute it in the United States will be entitled to label the product according to its type designation ''Pisco'' without the term ''brandy'' on the label, in the same way that a product labeled with the type designation ''Cognac'' is not required to also bear the class designation ''brandy.''

TTB notes that the Peruvian standard allows products designated as Pisco to have an alcohol content ranging from 38 to 48 percent alcohol by volume, and the Chilean standard allows products designated as Pisco to have an alcohol content as low as 30 percent alcohol by volume. However, since the standard proposed in this document would identify Pisco as a type of brandy, and the U.S. standard requires that brandy must be bottled at not less than 40 percent alcohol by volume, any Pisco imported into the United States would have to conform to this minimum bottling proof requirement. A product that is bottled at below 40 percent alcohol by volume would fall outside this class and type designation. Depending on the way that such a product is manufactured, it could be labeled as a ''diluted Pisco'' or as a distilled spirits specialty product bearing a statement of composition.

Finally, TTB believes that it is appropriate to remove both ''Pisco brandy'' and ''Cognac'' from § 5.22(k)(3), where they are listed as examples of geographical names that are not names for distinctive types of distilled spirits, and that have not become generic. Pisco will appear in new § 5.22(d)(9), where it will be a type of brandy defined as grape brandy manufactured in Peru or Chile in accordance with the laws and regulations governing the manufacture of Pisco of the country of manufacture.

Cognac currently appears in § 5.22(d)(2), where it is a type of brandy defined as ''grape brandy distilled in the Cognac region of France, which is entitled to be so designated by the laws and regulations of the French Government.'' The inclusion of ''Cognac'' in the list of examples of geographical names that are not names for distinctive types of distilled spirits, and that have not become generic, in § 5.22(k)(3) is duplicative and confusing. Accordingly, TTB proposes to remove the reference to Cognac in § 5.22(k)(3) as a technical correction to the regulations.

Effect on Currently Approved Labels

If finalized, this change to the regulations would revoke by operation of regulation any COLAs that specify ''Pisco'' as the class and type or brand name or fanciful name of distilled spirits products that are not products of Peru or Chile. TTB has searched its COLA database, and believes that this rulemaking will affect only a small number of labels.

Public Participation

Comments Invited

We invite comments from interested members of the public on this proposed rulemaking.

Submitting Comments

Please submit your comments by the closing date shown above in this notice. You may submit comments in one of the following three ways:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form associated with this notice in Docket No. TTB–2012–0001 on ''Regulations.gov,'' the Federal e-rulemaking portal, at *http://www.regulations.gov.* A direct link to that docket is available under Notice No. 126 on the TTB Web site at *http://www.ttb.gov/spirits/spirits-rulemaking.shtml.* Supplemental files may be attached to comments submitted via Regulations.gov. For information on how to use Regulations.gov, click on the site's Help tabs.
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.
- *Hand Delivery/Courier:* You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Suite 200–E, Washington, DC 20005.

Your comments must reference Notice No. 126 and include your name and

mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not accept anonymous comments, does not acknowledge receipt of comments, and considers all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via Regulations.gov, please enter the entity's name in the ''Organization'' blank of the comment form. If you comment via mail, please submit your entity's comment on letterhead.

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

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, TTB will post, and the public may view, copies of this notice and any electronic or mailed comments we receive about it. A direct link to the Regulations.gov docket containing this notice and the posted comments received on it is available on the TTB Web site at *http://www.ttb.gov/spirits/spirits-rulemaking.shtml* under Notice No. 126. You may also reach the docket containing this notice and its related comments through the Regulations.gov search page at *http://www.regulations.gov.*

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

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

Regulatory Analysis and Notices

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6), TTB certifies that this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. The propose rule would clarify the statue of Pisco under the standards of identity for distilled spirits and, if promulgated, will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Drafting Information

Karen Welch of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this notice.

List of Subjects in 27 CFR Part 5

Advertising, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

Amendment to the Regulations

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR part 5 as follows:

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

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

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

2. Section 5.22 is amended by:

a. In paragraph (d) introductory text, removing the words ''paragraph (d)(1) through (8)'' and adding, in their place, the words ''paragraphs (d)(1) through (9)'';

b. In paragraph (k)(3), by removing the words ''Cognac,'' and ''Pisco brandy,''; and

c. Adding new paragraph (d)(9) to read as follows:

§ 5.22 The standards of identity.

* * * * *

(d) * * *

(9) ''Pisco'' is grape brandy manufactured in Peru or Chile in accordance with the laws and regulations governing the manufacture of Pisco of the country of manufacture.

(i) ''Pisco Perú'' (or ''Pisco Peru'') is Pisco manufactured in Peru in accordance with the laws and regulations of Peru governing the manufacture of Pisco.

(ii) ''Pisco Chileno'' or ''Chilean Pisco'' is Pisco manufactured in Chile in accordance with the laws and regulations of Chile governing the manufacture of Pisco.

* * * * *

Signed: February 3, 2012.

John J. Manfreda,

Administrator.

Approved: February 27, 2012.

Timothy E. Skud,

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

[FR Doc. 2012–7256 Filed 3–26–12; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SATS No. MT–033–FOR; Docket ID OSM–2011–0012]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of Montana's response to the Office of Surface Mining Reclamation and Enforcement's (OSM) November 22, 2011, letter pertaining to a previously proposed amendment to the Montana regulatory program (hereinafter, the ''Montana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Montana proposes changes to the Montana Strip and Underground Mine Reclamation Act (MSUMRA) that pertain to coal prospecting. Montana intends to revise its program to comply with changes made in the 2011 Montana Legislature as a result of the passage of Senate Bill 286.

This document gives the times and locations that the Montana program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we

will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., m.s.t. April 26, 2012. If requested, we will hold a public hearing on the amendment on April 23, 2012. We will accept requests to speak until 4 p.m., m.s.t. on April 11, 2012.

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

- *Federal eRulemaking Portal: www.regulations.gov.* This proposed rule has been assigned Docket ID: OSM–2011–0012. If you would like to submit comments through the Federal eRulemaking Portal, go to *www.regulations.gov* and follow the instructions.
- *Mail/Hand Delivery/Courier:* Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, POB 11018, 150 East B Street, Casper, Wyoming 82601–1018.

Instructions: All submissions received must include the agency name and ''MT–033–FOR.'' For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Comment Procedures heading in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: In addition to viewing the docket and obtaining copies of documents at *www.regulations.gov,* you may review copies of the Montana program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of the amendment by contacting OSM's Casper Field Office.

Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, POB 11018, 150 East B Street, Casper, Wyoming 82601–1018, (307) 261–6555, *jfleischman@osmre.gov.*

Edward L. Coleman, Bureau Chief, Industrial and Energy Minerals Bureau, Montana Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620–0901, (406) 444–4973, *ecoleman@mt.gov.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Telephone: (307) 261–6555. Internet: *jfleischman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Montana Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Montana program on April 1, 1980. You can find background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program in the April 1, 1980, **Federal Register** (45 FR 21560). You can also find later actions concerning Montana's program and program amendments at 30 CFR 926.15, 926.16, and 926.30.

II. Description of the Proposed Amendment

By letter dated July 20, 2011, Montana sent us a proposed amendment to its program (Administrative Record Docket ID No. OSM–2011–0012) under SMCRA (30 U.S.C. 1201 *et seq.*). Montana submitted the amendment to include changes made to the MSUMRA as a result of the 2011 Montana Legislature passage of Senate Bill 286 relating to coal prospecting.

Specifically, Montana proposes to amend the MSUMRA to modify the coal prospecting procedures to allow for a new type of coal prospecting permit when prospecting is conducted to determine the location, quantity, and quality of coal that is (1) outside an area designated as unsuitable, (2) does not remove more than 250 tons, and (3) does not substantially disturb the natural land surface. The effect of the modified procedures causes MSUMRA to have three tiers of prospecting regulation, rather than the currently approved two tiers. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

We announced receipt of the proposed amendment in the October 17, 2011, **Federal Register** (200 FR 64047; Administrative Record No. OSM 2011–0012–0001), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy. Because no one requested a public hearing or meeting, none was held. The public comment period ended on November 17. 2011. We received comments from the Mine Safety and Health Administration stating that it agreed with the proposed revisions. We did not receive any comments from the general public.

During our review of the amendment, we identified areas needing clarification at MSUMRA Section 82–4–226. We notified Montana of our concerns by letter dated November 22, 2011 (Administrative Record No. OSM–2011–0012–0005). Montana responded in a letter dated December 22, 2011, by submitting additional explanatory information (Administrative Record No. OSM–2011–0012–0006). Specifically, Montana clarified when prospecting operations would be regulated under proposed MSUMRA Section 82–4–226(7), and that prospecting operations conducted under proposed MSUMRA Sections 82–4–226(7)(b) and (8) would not be allowed to substantially disturb the natural land surface. Finally, Montana clarified that proposed MSUMRA Section 82–4–226(7) would be interpreted and implemented based upon legislative history and the rules of statutory construction so that when operations are permitted under MSUMRA Section 82–4–226(8), subsections (1) and (2) would not apply, but subsections (3) through (6) would apply.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the submission satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Montana program.

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 may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**) will be included in the

docket for this rulemaking and considered.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We would appreciate all comments relating to this specific issue, but those most useful and likely to influence decisions on the final rule will be those that either involve personal experience or include citations to and analysis of the Surface Mining Control and Reclamation Act of 1977, its legislative history, its implementing regulations, case law, other State or Federal laws and regulations, data, technical literature, or other relevant publications.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t. on April 11, 2012. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If there is only limited interest in participating in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

VI. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 6, 2012.

Allen D. Klein,

Director, Western Region.

[FR Doc. 2012–7325 Filed 3–26–12; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 155

[Docket No. USCG–2011–0430, Formerly CGD 90–068]

RIN 1625–AA02, Formerly 2115–AD66

Discharge Removal Equipment for Vessels Carrying Oil

AGENCY: Coast Guard, DHS.

ACTION: Notice of intent to finalize with request for comments.

SUMMARY: The Coast Guard is advising the public of its intent to finalize regulations previously published as an interim final rule on December 22, 1993. The interim final rule was published to reduce the risk of oil spills, improve vessel oil spill response capabilities, and minimize the impact of oil spills on the environment, but certain portions of the interim final rule were never published as a final rule. Because of the lapse in time since the interim final rule's publication, the Coast Guard is seeking comments from the public before finalizing those portions of the interim final rule.

DATES: Comments must be received on or before May 29, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0430 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Mr. David Du Pont, Office of Standards Evaluation and Development (CG–523), U.S. Coast Guard; telephone 202–372–1497, email *David.A.DuPont@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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VIII. Intent To Finalize; Request for Comments

I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0430), 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 (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Notice'' and insert ''USCG–2011–0430'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. 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. We will consider all comments and material received during the comment period and may change the final rule based on your comments.

B. 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,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0430'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. If you do not have access to the Internet, you may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

D. Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for one on or before April 26, 2012 using one of the four methods specified under the **ADDRESSES** section above. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**. Such a notice will also include contact information for requests regarding facilities or services for individuals with disabilities or special assistance at the public meeting.

II. Abbreviations

CFR Code of Federal Regulations
COI Certificate of Inspection
DRE Discharge removal equipment
EA Environmental Assessment
FONSI Finding of No Significant Impact
FR Federal Register
IFR Interim final rule
IMO International Maritime Organization
NAICS North American Industry Classification System
NEPA National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f)
NOI Notice of intent
OPA 90 Oil Pollution Act of 1990 (Public Law 101–380, 104 Stat. 484, August 18, 1990)
OSRO Oil spill removal organization
OSRV Oil spill response vessel
RE Regulatory Evaluation (aka Regulatory Assessment)
§ Section symbol
U.S.C. United States Code

III. Basis and Purpose

A. Statutory and Regulatory History

Section 4202(a)(6) of the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380; 104 Stat. 484; August 18, 1990) amended section 311(j) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)) by, among other things, adding a new paragraph (6) to require vessels operating on the navigable waters of the United States and carrying oil or a hazardous substance in bulk as cargo to carry appropriate discharge removal equipment (DRE) on board.

On August 30, 1991, the Coast Guard published an advance notice of proposed rulemaking to solicit information to assist the Coast Guard in development of proposed rules that implement the OPA 90 mandate for DRE.[1] On September 29, 1992, the Coast Guard published a notice of proposed rulemaking that proposed to establish DRE regulations.[2] On December 22, 1993 the Coast Guard published an interim final rule (IFR) that established DRE requirements for on-deck spills, and also required vessels to install spill prevention coamings, to install emergency towing arrangements, and to have a prearranged capability to calculate damage stability in the event of a casualty.[3]

In addition to the above documents, the Coast Guard has published several DRE-related notices and technical amendments throughout the course of this rulemaking. The complete regulatory history of the DRE rulemaking is summarized below.

Document type	Federal Register cite	Date published	Comments
Advance notice of proposed rulemaking	56 FR 43534	8/30/1991	Requested comments and information to help develop response plans for all vessels carrying oil as cargo and carriage and inspection of discharge-removal equipment.

[1] 56 FR 43534 (Aug. 30, 1991).

[2] 57 FR 44912 (Sept. 29, 1992).

[3] 58 FR 67988 (Dec. 22, 1993).

Document type	Federal Register cite	Date published	Comments
Notice of intent to form a negotiated rulemaking committee.	56 FR 58202	11/18/1991	Consideration was given to establishing a negotiated rulemaking committee to develop part of the regulations to be issued under OPA 90.
Notice of intent to form a negotiated rulemaking committee; supplemental notice and clarification.	56 FR 60949	11/29/1991	Clarified list of groups that would be affected by the rulemaking.
Notice of meeting of negotiated rulemaking committee on oil spill response plans.	56 FR 66611	12/24/1991	Announced first public meeting of committee to be January 8–10, 1992.
Notice of meetings of negotiated rulemaking committee on oil spill response plans and finalization of committee membership.	57 FR 1890	1/16/1992	A schedule of four committee meetings was released; a previously scheduled meeting was cancelled and two additions were made to the list of committee participants.
Notice of additional meetings of the Oil Spill Response Plan Negotiated Committee.	57 FR 9402	3/18/1992	Announced the addition of a committee meeting on March 26, 1992.
Notice of proposed rulemaking	57 FR 44912	9/29/1992	Proposed requirement for vessels carrying oil in bulk as cargo.
Proposed rule; extension of comment period	57 FR 48489	10/26/1992	Extended comment period ended November 16, 1992.
IFR	58 FR 67988	12/22/1993	Established requirements for vessels carrying oil in bulk as cargo; also required vessels to have pre-arranged capability to calculate damage stability in case of a casualty. Rule also sought further comments and information on emerging technology to help prevent, contain, or remove oil discharges from vessels. Comment period ended February 22, 1994. IFR effective on January 21, 1994.
IFR correction	59 FR 3749	1/26/1994	Four corrections made to IFR (58 FR 67988).

B. Why is this notice of intent necessary?

The Coast Guard is advising the public of our intent to finalize regulations previously published as an IFR on December 22, 1993. The IFR was never published as a final rule. Because of the lapse in time since the IFR's publication, the Coast Guard is seeking comments from the public before issuing a final rule.

IV. Summary of Regulations in the IFR

Below is a list of the sections in Title 33 of the Code of Federal Regulations (CFR) part 155 that were amended or added by the DRE IFR.

Section No.	Title	Amendment
§ 155.140	Incorporation by reference	Revised paragraph (a); in paragraph (b), added an entry for International Maritime Organization (IMO) Resolution A.535(13).
§ 155.200	Definitions	Added new section to subpart B.
§ 155.205	Discharge removal equipment for vessels 400 feet or greater in length.	Added new section to subpart B.
§ 155.210	Discharge removal equipment for vessels less than 400 feet in length.	Added new section to subpart B.
§ 155.215	Discharge removal equipment for inland oil barges	Added new section to subpart B.
§ 155.220	Discharge removal equipment for vessels carrying oil as secondary cargo.	Added new section to subpart B.
§ 155.225	Internal cargo transfer capability	Added new section to subpart B.
§ 155.230	Emergency towing capability for oil barges	Added new section to subpart B.
§ 155.235	Emergency towing capability for oil tankers	Added new section to subpart B.
§ 155.240	Damage stability information for oil tankers and offshore oil barges.	Added new section to subpart B.
§ 155.245	Damage stability information for inland oil barges	Added new section to subpart B.
§ 155.310	Containment of oil and hazardous material cargo discharges.	Revised the section heading and the introductory text to paragraph (b); added paragraphs (c) and (d).

V. Subsequent Changes to the IFR Regulations

Since the publication of the IFR, a number of separate rulemaking projects and technical amendments have modified the sections amended or added by the IFR. These subsequent amendments were finalized after notice in the **Federal Register** and an opportunity for public comment. Accordingly, these subsequent amendments are not the subject of this notice of intent (NOI). The subject of this NOI is limited to those portions of the IFR that have not yet been finalized.

A summary of the subsequent amendments follows.

Section No.	Source(s) of amendment	Description of change
§ 155.140	CGD 96–026, 61 FR 33666, June 28, 1996; CGD 95–028, 62 FR 51194, Sept. 30, 1997; USCG–1998–4443, 63 FR 71763, Dec. 30, 1998; USCG–1999–5151, 64 FR 67176, Dec. 1, 1999; USCG–2008–0179, 73 FR 35015, June 19, 2008; USCG–1998–3417, 73 FR 80648, Dec. 31, 2008, as amended by USCG–2001–8661, 74 FR 45026, Aug. 31, 2009; USCG–2010–0351, 75 FR 36285, June 25, 2010.	Periodically updated CG and other addresses, replaced emergency towing arrangement guidelines for tankers in 1997, revised format of section in 2008.
§ 155.200	USCG–2001–9046, 67 FR 58524, Sept. 17, 2002; 73 FR 79316, Dec. 29, 2008.	Added definition in 2002, then removed same definition in 2008.
§ 155.205	USCG–1998–3799, 64 FR 35531, June 30, 1998	In paragraph (a), removed compliance date that had passed.
§ 155.210	USCG–1998–3799, 64 FR 3553, June 30, 1998	In paragraph (a), removed compliance date that had passed.
§ 155.215	USCG–1998–3799, 64 FR 35531, June 30, 1998	In paragraph (a), removed compliance date that had passed.
§ 155.220	USCG–1998–3799, 64 FR 35531, June 30, 1998	In paragraph (a), removed compliance date that had passed.
§ 155.225	USCG–1998–3799, 64 FR 35531, June 30, 1998	In paragraph (a), removed compliance date that had passed.
§ 155.230	USCG–1998–4443, 65 FR 31811, May 19, 2000, as amended by USCG–2001–8661, 74 FR 45026, Aug. 31, 2009; USCG–2010–0351, 75 FR 36285, June 25, 2010.	Replaced section in 2000, renamed to emergency control systems for tank barges.
§ 155.235	CGD 95–028, 62 FR 51194, Sept. 30, 1997; USCG–2001–8661, 74 FR 45026, Aug. 31, 2009.	Replaced section in 1997 and again in 2009. Revised into one paragraph stating emergency towing arrangements must be on both ends of oil tankers not less than 20,000 deadweight tons (dwt). Referenced more recent IMO Maritime Safety Committee resolution.
§ 155.240	USCG–1998–3799, 63 FR 35531, June 30, 1998	In paragraph (a), removed compliance date that had passed; and, in paragraph (d), redesignated paragraphs (i), (ii), and (iii) as paragraphs (1), (2) and (3) respectively.
§ 155.245	USCG–1998–3799, 63 FR 35531, June 30, 1998	Removed compliance date that had passed.
§ 155.310	USCG–1998–3799, 63 FR 35531, June 30, 1998	Removed compliance date that had passed.

VI. Discussion of Comments

The Coast Guard received 38 comment letters in response to the IFR, with about 60 individual comments. No public meeting was requested and none was held. The comments are grouped below into comments related to specific 33 CFR part 155 DRE sections and general comments to the IFR.

A. Comments on Specific Sections in the IFR

Sections 155.205, 155.210, 155.215, and 155.220—Carriage of Discharge Removal Equipment for On-Deck, Oil-Cargo Spills

The Coast Guard received a number of comments on the carriage of DRE for on-deck oil-cargo spills.

Several commenters suggested changes to the quantities of oil specified in paragraph (a) of §§ 155.205, 155.210, 155.215, and 155.220, stating that the equipment and supplies must be capable of containing and removing oil (e.g., 12 barrels of oil for vessels 400 feet or greater in length). Two comments stated that the quantities specified in the IFR were too small, one that the quantities were too large, and one that they were reasonable.

We believe that the quantities specified strike an appropriate balance for the categories of vessels specified, and that the distribution of comments received supports that view.

Two comments stated that paragraphs (b)(1) and (b)(2) of §§ 155.205, 155.210, 155.215, and 155.220 should state the specific quantity of sorbent and hand tools required. These sections presently require that the equipment and supplies be ''appropriate'' for the containment and removal of the amount of oil specified.

We decided not to require carriage of specific quantities of sorbents and hand tools because vessel owners or operators are best able to determine the quantity necessary given variability in cargo carriage, operational practices and environment, and other factors.

One comment stated that the IFR did not define the term ''contract.''

We disagree. The term ''contract or other approved means'' is defined in 33 CFR 155.1020.

Three comments stated that inland oil barges engaged in transfer operations between the barge and another vessel should not rely on the other vessel to provide the required DRE.

We agree. The optional provision to allow inland oil barges to rely on other means for the required DRE applies only to transfer facilities in which the barge owner or operator has made prearrangements through a contract or other approved means. Inland oil barges must maintain their own DRE when involved in bunkering operations.

Several comments stated that the exclusive transportation of certain cargoes, such as animal fats and vegetable oils or Grade D and E products (see 46 CFR 30.10–15), have a reduced risk and should be regulated differently.

We see the merit of this argument and will consider revisions to these sections. We seek comments on which specific cargoes fall into the reduced risk category and in particular how the risk is reduced.

Sections 155.230 and 155.235—Emergency Towing Capability

The Coast Guard received a number of comments on emergency towing capability. Most of the comments related to tankers, whereas three related to barges.

Regarding barges, § 155.230 (originally titled ''Emergency towing capability for oil barges'') was replaced by a separate rulemaking (Emergency Control Measures for Tank Barges, 65 FR 31811, May 19, 2000) which became effective on December 11, 2000. Because § 155.230 was completely replaced by that final rule after the public had an opportunity to comment, we seek no further comments on that section.

Similarly for tankers, § 155.235 was replaced, on two separate occasions, by two separate rulemakings. The first rulemaking, titled ''Harmonization With International Safety Standards'' (62 FR 51194, September 30, 1997), became effective on October 30, 1997. The second rulemaking, titled ''Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions'' (74 FR 45026, August 31, 2009), became effective on September 30, 2009. Because § 155.235 was completely replaced by two final rules after the public had an opportunity to comment,

we seek no further comments on that section.

Sections 155.240 and 155.245—Damage Stability Information

The Coast Guard received a number of comments on damage stability information.

One commenter stated that, for inland oil barges, the Coast Guard should allow damage stability information to be maintained in computerized form instead of paper form.

Nothing in the current regulation prohibits this. Section 155.245 requires that the plans for an inland tank barge be readily available for use in salvage, stability, and residual strength calculations. However, the regulation does not specify the form of the plans (e.g., paper or electronic). As currently written, there is nothing in the regulation that requires—or precludes—the plans being in either form; operators may use whichever is most convenient.

Two commenters stated that the damage stability information requirement for oil tankers should only apply to larger oil tankers.

We disagree. The ability to perform stability and strength calculations as quickly as possible is appropriate for all 46 CFR Subchapter D tank vessels (ships and barges) on ocean and coastwise routes—regardless of vessel size—to minimize the risk of subsequent spills during the salvage response.

Section 155.240 requires owners or operators of 46 CFR Subchapter D tank vessels to ensure that they have pre-arranged, prompt access to computerized, shore-based damage stability and residual structural strength calculation programs. Pre-loading vessel information into computer programs allows for faster analytic support in casualty situations. This is because time is of the essence in these circumstances, especially for offshore locations where tidal levels or sea conditions can change significantly in short order. This rationale applies to oil tankers, regardless of vessel size.

One commenter stated that the Coast Guard went beyond the recommendation of the regulatory negotiation committee (Committee) by requiring that computerized damage stability information for oil tankers be kept on shore.

The Negotiated Rulemaking Act (5 U.S.C. 561 *et seq.*) permits an agency to establish a negotiated rulemaking committee to negotiate and develop a proposed rule. Nothing in the Negotiated Rulemaking Act requires an agency to adopt a negotiated rulemaking committee's recommendation as a final rule.

The DRE NPRM referred to the Committee recommendation that an owner or operator of a tanker, offshore tank barge, or coastal tank barge have prearranged, prompt access to computerized on-board or shore-based damage stability and residual structural strength calculation programs. 57 FR 44916.

Based on subsequent analysis, the Coast Guard determined that computerized damage stability information should be specifically available ashore. This is to ensure that information is available if the information aboard the vessel is destroyed or inaccessible. The Coast Guard included this requirement in the IFR and intends to finalize this requirement in the final rule. Additionally, a requirement for computerized shore-based damage stability information is also found in the Tank Vessel Response Plans for Oil regulations (see 33 CFR 155.1035(c)(11)(ii) and 155.1040(c)(10)(ii)).

Section 155.310—Deck Edge Coamings for On-Deck Spills

The Coast Guard received a number of comments on deck edge coamings for on-deck spills.

One commenter stated that the term ''peripheral coamings'' in § 155.310(c) may be misinterpreted and be applied to areas beyond the cargo deck area.

We have reviewed the use of the term ''peripheral coamings'' and believe that § 155.310(c) clearly delineates the boundaries of the required coamings.

Two commenters stated that coamings may present a safety hazard for vessels operating for prolonged periods in freezing weather.

We agree in part. The Coast Guard recognizes the special difficulties and hazards posed by the buildup of ice through prolonged periods of operation in freezing weather. Depending upon the particulars of a vessel, the owner or operator may find the need to request an exemption from these requirements under 33 CFR 155.130.

One commenter stated that the requirement to install coamings should apply only to vessels that carry oil and not to those that are certificated to carry both oil and hazardous materials, but actually carry only hazardous materials.

We disagree. If a vessel is certificated to carry oil, the vessel must be outfitted to meet all of the requirements for the carriage of oil.

One commenter stated that the coaming-containment capacity should be raised. Another two commenters stated that the containment capacity should be lowered for certain vessels.

We believe that the coaming containment capacities specified strike an appropriate balance between the size of a vessel and the areas of operation, and that the distribution of comments received supports that view.

One commenter stated that alternatives to peripheral coamings should be allowed on tank vessels carrying animal fats, vegetable oils, or non-persistent oils, but offered no specific alternative.

Absent a specific alternative to evaluate, we disagree and believe that peripheral coamings are an appropriate element of the pollution prevention regime for preventing on-deck spills of any oil type from reaching the marine environment.

B. General Comments

On-Water Containment and Removal Equipment

The IFR asked for additional information on major spill prevention and response equipment, such as booms, skimmers, and temporary storage devices designed to be carried on board vessels. It specifically requested information on the appropriateness of this equipment, on the technological and economic feasibility of requiring this equipment, and on the compatibility of this equipment with safe vessel operation.

We received 18 responses to this request. Ten responses were in support of the carriage of major equipment on board vessels, and eight responses were against the concept. Of the ten responses in support, eight were from vessel-based equipment developers. Of the eight responses in opposition, all were vessel operators or organizations that represented vessel operators.

Section 310 of the Coast Guard Authorization Act of 1993 (Pub. L. 103–206) required the Secretary of Transportation [4] to review and evaluate these technologies, and to submit a report to Congress with recommendations on the feasibility and environmental benefits of requiring tank vessels to carry oil spill prevention and response equipment. The DRE IFR provided a means to obtain that information.

On September 8, 1998, the Coast Guard issued a report to Congress, titled ''Feasibility and Environmental Benefits Associated with Requiring Oil Spill Response Equipment on Tank Vessels.'' A copy of that report is available in the docket where indicated under the

[4] Prior to February 25, 2003, the Coast Guard was part of the Department of Transportation. Since that time, the Coast Guard has been part of the Department of Homeland Security.

''Public Participation and Request for Comments'' section of this notice.

In that report the Coast Guard concluded that while it may be technologically feasible to carry and deploy oil spill response equipment aboard a tank vessel without risking the safety of the crew, the practical limitations of the equipment in oil spill response make it economically, environmentally, and technologically unfeasible to require tank vessels to carry the equipment. The Coast Guard further concluded, in consideration of the practical limitations on the equipment's effectiveness in spill response, that vessel-based equipment should not be required for tank vessels and, if carried, should not be credited against their required response capabilities given those limitations.

We continue to believe that shore-based response equipment is the preferred method for responding to actual or potential on-water oil spills. We do not believe that tank vessels should be required to carry major prevention and response equipment.

Spill-Tracking Devices

We received three comments on devices for tracking the movement of spills. Two commenters stated that the carriage of some form of spill tracking device should be required. One commenter stated that, if a spill tracking device were required, a national or international standard should be adopted first so that a vessel need carry only one type of device throughout its operating area.

Since the IFR was published, oil spill tracking requirements for tank vessels have changed. In the rulemaking titled ''Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions'' (74 FR 45026, August 31, 2009), owners and operators of tank vessels operating in oceans and coastal waters must identify in their response plans, and ensure availability through contract or other approved means, response resources necessary to provide aerial oil tracking to support oil spill assessment and cleanup activities (see 33 CFR 155.1050(l)).

We believe that this response plan requirement is sufficient in the area of oil spill tracking, and therefore seek no further comments on this topic.

Preemption

Two commenters stated that the Coast Guard lacks the authority under OPA 90 to preempt more stringent state requirements related to DRE.

We disagree. It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke,* 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000)). Here, the Coast Guard is promulgating regulations to require discharge removal equipment for vessels operating on the navigable waters of the U.S. and that are carrying oil in bulk as cargo or cargo residue, which will improve safety. Because States may not promulgate rules within this category, preemption is not an issue.

Oil Spill Response Vessels

One commenter stated that we should clarify whether this rule applies to a dedicated oil spill response vessel (OSRV).

We wish to clarify that this rule does not apply to a dedicated OSRV when conducting response operations in the response area.

Inland Oil Barges on Limited Offshore Routes

One comment stated that the rule should allow barges operating offshore under a special Certificate of Inspection (COI) endorsement for limited offshore/coastwise routes during fair weather to be equipped under the inland oil barge requirements in § 155.215.

We agree, and note that this suggestion is similar to the requirements for emergency control measures for tank barges added on May 19, 2000. The current regulations provide that if a tank barge has its COI limited to not exceed the restrictions in §§ 155.230(a)(1) (territorial sea) or 155.230(a)(2) (Great Lakes), then it may be equipped under the inland oil barge requirements in § 155.215.

VII. Supporting Analyses

Additionally, in this NOI we seek comments in two other areas. First, we seek comments on the Regulatory Assessment. Second, we seek comments on the Environment section.

A. Regulatory Assessment

The IFR was accompanied by a Regulatory Evaluation (RE) (a copy is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this notice). Due to the amount of time that has passed since the IFR and RE were published, we seek current information related to the cost of compliance with certain sections of the DRE requirements. Please note that we are not seeking comments concerned with emergency towing equipment cost data or other portions of the IFR that have since been finalized through other rulemakings after the public has had an opportunity to comment.

The table below shows the elements on which we are seeking comment, the units in which we measure them, the relevant chapter of the IFR's RE, and the Coast Guard's estimate of the cost.

DRE COST DATA TABLE

Element	Units	IFR RE basis	USCG estimate of cost per unit
Coaming	$/Linear feet	Chapter 4	$20–25
55 gal Drum containing oil products/sorbents	55 gallon drum	Chapter 4	200
Flex bin 1 yard box (4 55 gallon drum)	55 gallon drum	Chapter 4	460
Bulk double bagged oil/sorbents $260/ton	ton	Chapter 4	260
Containment Boom	Linear feet	Chapter 5	15–35
Storage	Cubic feet	Chapter 5	5
20-foot Work Boat	$/boat	Chapter 5	40,000
Work Boat Home Support Equipment	$/boat	Chapter 5	35,000
Training	$/vessel/year	Chapter 5	500
Maintenance and Repair		Chapter 5	
Tanker's Storage Shed	$/year	Chapter 5	300–1,600

DRE COST DATA TABLE—Continued

Element	Units	IFR RE basis	USCG estimate of cost per unit
Barge's Storage Shed	$/year	Chapter 5	200–1,300
Boat	$/year	Chapter 5	5,000
Source Control Equipment		Chapter 6	
Submersible Pumping Kit	$/kit	Chapter 6	141,000

Additionally, we seek comment on the following items:

(1) Please describe your implementation of DRE and how you have invested in the following:

(a) Operational deck spill capability;

(b) Warehouse equipment capability; and

(c) Source control equipment.

(2) Have you needed to use the equipment referenced in question (1) in any operational situation? If so—

(a) Please describe the situation;

(b) What issues did you encounter in that implementation?; and

(c) What recommendations do you have in improving that implementation?

(3) Please describe the maintenance requirements associated with the equipment referenced in question (1).

(4) What issues have you encountered in implementing the IFR?

(5) How long did it take you to implement the IFR?

(6) Are you a small business, according to the North American Industry Classification System (NAICS) codes?

(7) What issues did you encounter with regard to similar rules regarding the implementation of the other OPA 90 requirements and the implementation of the DRE IFR?

(a) Were there issues with complementary implementation?

(b) Were there issues with cross-purpose implementation?

(8) How do you work together with the oil spill removal organizations (OSROs), in planning for, or responding to, an incident?

(9) What is the vessel type (i.e. tanker, offshore barge, etc.) and size (i.e. length of vessel) for the data above?

To facilitate public input, we have placed in the docket a questionnaire labeled ''Discharge Removal Equipment (DRE) Cost Data Template.'' We request that individuals or organizations with knowledge of the cost of compliance use the template to provide input via the docket. However, you are not required to use this format when submitting comments.

B. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this notice. This rule involves regulations concerning the equipping of vessels. In addition, it implements a Congressional mandate (section 4202(a) of OPA 90). We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

At the IFR stage, an Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) were placed in the docket for this rulemaking. No comments were received on the EA or the FONSI.

VIII. Intent To Finalize; Request for Comments

The Coast Guard invites further comments regarding the finalization of the IFR provisions that have not yet been finalized. Specifically, we seek comments on three topics—

- DRE requirements (except for §§ 155.140, 155.230 and 155.235 as these sections were superseded by subsequent rulemakings);
- Regulatory Assessment; and
- Environmental Impact.

Written comments and responses will be added to the docket for this rulemaking (USCG–2011–0430). Upon close of the comment period, the Coast Guard will consider all comments received before finalizing the DRE rulemaking.

Dated: February 22, 2012.

J. G. Lantz,

Director of Commercial, Regulations and Standards.

[FR Doc. 2012–7344 Filed 3–26–12; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2011–0040: 4500030114]

RIN 1018–AX75

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Ipomopsis polyantha* (Pagosa skyrocket), *Penstemon debilis* (Parachute beardtongue), and *Phacelia submutica* (DeBeque phacelia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the July 27, 2011, proposed designation of critical habitat for *Ipomopsis polyantha* (Pagosa skyrocket), *Penstemon debilis* (Parachute beardtongue), and *Phacelia submutica* (DeBeque phacelia) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis, a draft environmental assessment, and an amended required determinations section of the proposal. We also propose to revise critical habitat unit boundaries for *Ipomopsis polyantha* units 2 and 4, and for *Phacelia submutica* units 6, 7, and 9. Finally, we announce some potential additional areas being considered for exclusion from critical habitat for *Penstemon debilis* unit 3. We are reopening the comment period for the proposal to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated draft economic analysis (DEA), and draft environmental assessment (Draft EA), and the amended required determinations section. If you submitted comments previously, you do not need to resubmit them because we have already incorporated them into the public record and will fully consider them in preparation of the final rule.

DATES: We will consider all comments received or postmarked on or before April 26, 2012. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for docket FWS–R6–ES–2011–0040 and then follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R6–ES–2011–0040; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Acting Western Colorado Supervisor, U.S. Fish and Wildlife Service, Western Colorado Ecological Services Office, 764 Horizon Drive, Suite B, Grand Junction, CO 81506–3946; telephone 970–243–2778; facsimile 970–245–6933. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed critical habitat for *Ipomopsis polyantha, Penstemon debilis,* and *Phacelia submutica* that was published in the **Federal Register** on July 27, 2011 (76 FR 45078), our DEA of the proposed designation, our Draft EA, our amendment of required determinations, our proposal to revise critical habitat unit boundaries for *Ipomopsis polyantha* units 2 and 4, and for *Phacelia submutica* units 6, 7, and 9, and additional areas being considered for exclusion from critical habitat for *Penstemon debilis* unit 3 provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*) including whether there are threats to these species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent;

(2) Specific information on:

(a) The amount and distribution of *Ipomopsis polyantha, Penstemon debilis,* and *Phacelia submutica* habitat;

(b) What areas that are occupied and that contain features essential to the conservation of these species should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change;

(d) What areas not occupied at the time of listing are essential for the conservation of these species and why; and

(e) Means to quantify the amount of natural and human-caused disturbance these species prefer or can tolerate.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on *Ipomopsis polyantha, Penstemon debilis,* and *Phacelia submutica* and proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(6) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, especially the Mount Callahan Natural Area, the Mount Callahan Saddle Natural Area, newly designated areas at the Mt. Logan mine, and other lands owned by OXY USA (Oxy) for *Penstemon debilis,* and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(7) Information on the extent to which the description of potential economic impacts in the DEA is complete and accurate.

(8) Whether the DEA makes appropriate assumptions regarding current practices and any regulatory changes that will likely occur if we designate critical habitat.

(9) Whether the DEA correctly assesses the effect of regional costs associated with land use controls that may result from the designation of critical habitat.

(10) Whether the DEA identifies all Federal, State, and local costs and benefits attributable to the proposed designation of critical habitat, and information on any costs that have been inadvertently overlooked.

(11) Whether the Draft EA adequately presents the purpose of and need for the proposed action, the proposed action and alternatives, and the evaluation of the direct, indirect, and cumulative effects of the alternatives.

(12) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning our proposed rule or the associated DEA and draft EA by one of the methods listed in **ADDRESSES.**

If you submit a comment via *http://www.regulations.gov*, your entire comment—including your personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, DEA, and Draft EA, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Colorado Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed critical habitat, the DEA, and the Draft EA on the Internet at *http://www.regulations.gov* at docket number FWS–R6–ES–2011–0040, or at *http://www.fws.gov/mountain-prairie/species/plants/3ColoradoPlants/index.html,* or by mail from the Western Colorado Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Previous Federal Actions

It is our intent to discuss only those topics directly relevant to the proposed designation of critical habitat for *Ipomopsis polyantha, Penstemon debilis,* and *Phacelia submutica.* For more information on previous Federal actions concerning *I. polyantha, P.*

debilis, and *P. submutica,* refer to the proposed designation of critical habitat published in the **Federal Register** on July 27, 2011 (76 FR 45078). Approximately 9,641 acres (ac) (3,902 hectares (ha)) are being proposed for designation as critical habitat for *I. polyantha.* Approximately 19,155 ac (7,752 ha) are being proposed for designation as critical habitat for *P. debilis.* Approximately 25,484 ac (10,313 ha) are being proposed for designation as critical habitat for *P. submutica.* In total, approximately 54,280 ac (21,967 ha) are being proposed for designation as critical habitat for the three species. The proposed critical habitat is located in Archuleta, Garfield, and Mesa Counties, Colorado. The original proposal had a 60-day public comment period, ending September 26, 2011. We will submit for publication in the **Federal Register** a final critical habitat designation for *I. polyantha, P. debilis,* and *P. submutica* on or before the statutory deadline of July 27, 2012.

For additional information on the biology of these species, see the July 27, 2011, final rule to list *Ipomopsis polyantha* as endangered, and to list *Penstemon debilis,* and *Phacelia submutica* as threatened (76 FR 45054); as well as the July 27, 2011 proposed critical habitat rule (76 FR 45078).

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection; and specific areas outside the geographical area occupied by the species at the time it is listed upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions that affect critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such an exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from the designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of *Ipomopsis polyantha, Penstemon debilis,* and *Phacelia submutica,* the benefits of critical habitat include public awareness of the presence of these species and the importance of habitat protection, and, where a Federal action exists, increased habitat protection for these species due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal action occur primarily on Federal lands or for projects undertaken by Federal agencies.

The final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a DEA concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES**).

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for *Ipomopsis polyantha, Penstemon debilis,* and *Phacelia submutica.* The DEA describes the economic impacts of all potential conservation efforts for *I. polyantha, P. debilis,* and *P. submutica.* Some of these costs will likely be incurred regardless of whether or not we designate critical habitat. The economic impact of the proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for these species (*e.g.,* under the Federal listing and other Federal, State, and local regulations). Therefore, the baseline represents the costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for these species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for these species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since these species were listed, and forecasts both baseline and incremental impacts likely to occur if we finalize the proposed critical habitat designation.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for *Ipomopsis polyantha, Penstemon debilis,* and *Phacelia submutica* over the next 20 years, which was determined to be the appropriate period for analysis because planning information was available for most activities to reasonably forecast activity levels for projects for a 20-year timeframe. The DEA identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing. The DEA quantifies economic impacts of conservation efforts for *Ipomopsis polyantha, Penstemon debilis,* and *Phacelia submutica* associated with the following categories of activity: (1) Energy development; (2) transportation projects; (3) agriculture and grazing; and (4) recreation.

Because of uncertainty regarding the level and distribution of future oil and gas development, the DEA presents a low and high cost scenario for baseline and incremental economic impacts. Over the next 20 years, potential baseline impacts in areas proposed for designation are estimated to be $3.85 million to $9.81 million (low and high cost scenarios; approximately $340,000 to $866,000 on an annualized basis), assuming a seven percent discount rate. Baseline impacts in areas considered for

exclusion are estimated to be $2.36 million. The DEA estimates that total potential incremental economic impacts associated with a critical habitat designation in areas proposed as critical habitat for all three species over the next 20 years will be $967,000 to $14.8 million (low and high cost scenarios; approximately $85,300 to $1.3 million on an annualized basis), assuming a 7-percent discount rate (Table 1). The largest contributor to potential incremental costs is impacts to oil and gas development, which represent approximately 90 percent of incremental impacts in the low-cost scenario and 99 percent of impacts in the high-cost scenario. Impacts to agriculture and grazing, recreation, and transportation projects combined represent less than ten percent of the incremental impacts in both scenarios analyzed.

TABLE 1—INCREMENTAL IMPACTS OF PROPOSED CRITICAL HABITAT DESIGNATION FOR IPOMOPSIS POLYANTHA, PENSTEMON DEBILIS, AND PHACELIA SUBMUTICA BY SPECIES, UNIT, AND ACTIVITY

[2012 dollars, assuming a 7-percent discount rate]

Unit #	Unit name	Oil & gas –low–	Oil & gas –high–	Transportation	Agriculture & grazing	Recreation	Species mgmt	Subtotal –low–	Subtotal –high–
Areas Proposed for Designation									
***Ipomopsis polyantha* (Pagosa Skyrocket)**									
1	Dyke	$0	$0	$9,370	$0	$0	$0	$9,370	$9,370
2	O'Neal Hill Special Botanical Area	0	0	0	0	7,500	0	7,500	7,500
3	Pagosa Springs	0	0	3,330	0	0	0	3,330	3,330
4	Eight Mile Mesa	0	0	0	0	7,500	0	7,500	7,500
Subtotal		0	0	12,700	0	15,000	0	27,700	27,700
***Penstemon debilis* (Parachute Beardtongue)**									
1	Brush Mountain	11,600	195,000	0	0	0	0	11,600	195,000
2	Cow Ridge	35,500	599,000	0	0	0	0	35,500	599,000
3	Mount Callahan	10,900	184,000	0	0	2,130	0	13,000	186,000
4	Anvil Points	8,470	143,000	0	0	2,130	0	10,600	145,000
Subtotal		66,400	1,120,000	0	0	4,250	0	70,600	1,120,000
***Phacelia submutica* (Debeque Phacelia)**									
1	Sulphur Gulch	37,300	629,000	0	1,590	1,060	0	39,900	632,000
2	Pyramid Rock	627,000	10,600,000	0	1,590	1,060	0	630,000	10,600,000
3	Roan Creek	398	6,720	0	0	0	0	398	6,720
4	DeBeque	13,100	221,000	0	1,590	1,060	0	15,800	224,000
5	Mount Logan	0	0	0	1,590	2,130	0	3,720	3,720
6	Ashmead Draw	44,700	755,000	0	1,590	1,060	0	47,400	757,000
7	Baugh Reservoir	18,200	307,000	0	1,590	1,060	0	20,800	310,000
8	Horsethief Mountain	60,200	1,020,000	0	43,600	5,820	0	110,000	1,070,000
9	Anderson Gulch	1,150	19,500	0	0	0	0	1,150	19,500
Subtotal		802,000	13,500,000	0	53,200	13,300	0	868,000	13,600,000
Total		868,000	14,700,000	12,700	53,200	32,500	0	967,000	14,800,000
Areas Considered for Exclusion									
Parachute Beardtongue									
3	Mount Callahan	0	0	0	0	0	0	0	0

Note: Totals may not sum due to rounding.

In the low cost scenario, proposed Unit 2 for *Phacelia submutica* has the highest incremental impacts (65 percent of total), followed by proposed Unit 8 for *P. submutica* (11 percent of total) and proposed Unit 6 for *P. submutica* (five percent of total). In the high cost scenario, these same three units (proposed Units 2, 8, and 4 for *P. submutica*) have the highest incremental impacts with 72 percent, seven percent, and five percent of the total incremental impacts, respectively.

As stated earlier, we are seeking data and comments from the public on the DEA and the Draft EA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of the species.

Draft Environmental Assessment; National Environmental Policy Act

When the range of a species includes States within the U.S. Tenth Circuit Court of Appeals, pursuant to the ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F .3d 1429 (10th Cir. 1996), we will complete an analysis under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA), on critical habitat designations. The range of *Ipomopsis polyantha, Penstemon debilis,* and *Phacelia submutica* is entirely within the State of Colorado, which is within the Tenth Circuit.

The Draft EA presents the purpose of and need for critical habitat designation, the proposed action and alternatives, and an evaluation of the direct, indirect, and cumulative effects of the alternatives under the requirements of NEPA as implemented by the Council on Environmental Quality regulations (40 CFR 1500 *et seq.*) and according to the Department of the Interior's NEPA procedures.

The Draft EA will be used by the Service to decide whether or not critical habitat will be designated as proposed; if the proposed action requires refinement, or if another alternative is appropriate; or if further analyses are needed through preparation of an environmental impact statement. If the proposed action is selected as described (or is changed minimally) and no further environmental analyses are needed, then a Finding of No Significant Impact (FONSI) would be the appropriate conclusion of this process. A FONSI would then be prepared for the environmental assessment.

Proposed Changes to Critical Habitat Unit Boundaries

In this document, we are proposing changes to some of the critical habitat units that were defined in the July 27, 2011, proposed designation of critical habitat for *Ipomopsis polyantha, Penstemon debilis,* and *Phacelia submutica.* We describe these changes below and provide updated critical habitat unit maps in this notice. Maps illustrating the changes from the previously proposed unit boundaries are available on the Internet at *http://www.regulations.gov* at docket number FWS–R6–ES–2011–0040, or at *http://www.fws.gov/mountain-prairie/species/plants/3ColoradoPlants/index.html.*

Ipomopsis polyantha

We are proposing to modify our proposed critical habitat Units 2 and 4 for *Ipomopsis polyantha* based on comments we have received from the U.S. Forest Service (USFS) and based on field visits made during the summer of 2011. Changes in acreage are depicted in Table 2.

TABLE 2—PROPOSED CHANGES TO CRITICAL HABITAT UNITS FOR IPOMOPSIS POLYANTHA

Critical habitat unit	Land ownership	Size of original unit	Size of proposed revision
Unit 2. O'Neal Hill Special Botanical Area	USFS—San Juan National Forest	784 ac (317 ha).	564 ac. (228 ha).
Unit 4. Eight Mile Mesa	USFS—San Juan National Forest	1,180 ac (478 ha).	1,146 ac. (464 ha).
Total for All Units (Units 1 and 3 unchanged)		9,894 ac (4,004 ha).	9,641 ac. (3,902 ha).

Unit 2. O'Neal Hill Special Botanical Area

We are proposing to reduce the size of Unit 2, the O'Neal Hill Botanical Area from 784 ac (317 ha) to 564 ac (228 ha). We are modifying this unit so that the thick pasture grass and riparian areas in the bottomlands that do not contain any of the primary constituent elements (PCEs) for *Ipomopsis polyantha* would no longer be included (USFS 2011, p. 1). We believe there is still enough area to provide protection for pollinators if this site is used as an introduction area in the future. This area is unoccupied and is owned by the USFS with 279 ac (113 ha), or 49 percent of the unit within the O'Neal Hill Special Botanical Area that was designated to protect another Mancos shale endemic, *Lesquerella pruinosa* (Pagosa bladderpod). Because *L. pruinosa* is sometimes found growing with *I. polyantha,* we believe the site has high potential for introduction of *I. polyantha.* Aside from the changes described here, the unit description from our proposed critical habitat rule still applies (76 FR 45078).

Unit 4. Eight Mile Mesa

We are proposing to reduce the size of Unit 4, Eight Mile Mesa, from 1,180 ac (478 ha) to 1,146 ac (464 ha). We are modifying this unit so that isolated patches that are separated from the large contiguous potential habitat by roads are not included (USFS 2011, p. 2). These isolated patches would not be suitable as potential introduction sites in the future because they are small and separated from the large block of contiguous habitat by roads. This unit is unoccupied and is owned by the USFS. Aside from the changes described here, the unit description from our proposed critical habitat rule still applies (76 FR 45078).

Phacelia submutica

For *Phacelia submutica,* we are modifying three of the proposed critical habitat units, all of which are occupied: Ashmead Draw (Unit 6), Baugh Reservoir (Unit 7), and Anderson Gulch (Unit 9). Changes to the acreages are depicted in Table 3. All three units have been made larger. The boundaries of all units were expanded based on 2011 field surveys in historical sites and in suitable habitat near these sites (Service 2011, pp. 1–12; CNHP 2011, pp. 1–3, spatial data).

TABLE 3—PROPOSED CHANGES TO CRITICAL HABITAT UNITS FOR PHACELIA SUBMUTICA

Unit No./Unit name	Original proposed critical habitat				Proposed revisions to critical habitat			
	Land ownership by type			Size of unit	Land ownership by type			Size of unit
	Federal	State	Private		Federal	State	Private	
Unit 6. Ashmead Draw	1,046 ac (423 ha).		174 ac (71 ha).	1,220 ac (494 ha).	1,110 ac (449 ha).		166 ac (67 ha).	1,276 ac. (516 ha).
Unit 7. Baugh Reservoir	19 ac (8 ha)		10 ac (4 ha)	28* ac (12 ha).	169 ac (68 ha).		261 ac (106 ha).	430 ac. (174 ha).
Unit 9. Anderson Gulch		173 ac (70 ha).	128 ac (52 ha).	301 ac (122 ha).		192 ac (78 ha).	149 ac (60 ha).	341 ac. (138 ha).

TABLE 3—PROPOSED CHANGES TO CRITICAL HABITAT UNITS FOR PHACELIA SUBMUTICA—Continued

Unit No./Unit name	Original proposed critical habitat				Proposed revisions to critical habitat			
	Land ownership by type			Size of unit	Land ownership by type			Size of unit
	Federal	State	Private		Federal	State	Private	
Total (all other units unchanged)	21,800 ac (8,822 ha).	173 ac (70 ha).	3,014 ac (1,220 ha).	24,987 ac (10,112 ha).	22,013 (8,908 ha).	192 ac (78 ha).	3,278 ac (1,327 ha).	25,484 ac. (10,313 ha).

*23 ac (9 ha) of this 28 ac (12 ha) is still included in Unit 7, Baugh Reservoir.

Unit 6. Ashmead Draw

We are proposing to increase the size of Unit 6, Ashmead Draw, from 1,220 ac (494 ha) to 1,276 ac (516 ha). In the spring of 2011, we revisited a historical location we had used to delineate the unit in our proposed rule and found that the site extended slightly to the east of where it was previously mapped (Service 2011, pp. 1–4). To accommodate this situation, we are proposing the boundary changes described here. The unit comprises both Federal and private lands in Mesa County, Colorado. Eighty-seven percent of this unit is managed by the Bureau of Land Management (BLM). The entire unit is within the Westwide Energy corridor, and 87 percent is within several grazing allotments. This unit is currently occupied. Aside from the changes described here, the unit description from our proposed critical habitat rule still applies (76 FR 45078).

Unit 7. Baugh Reservoir

We are proposing to increase the size of Unit 7, Baugh Reservoir, from 28 ac (12 ha) to 430 ac (174 ha). In the spring of 2011, we revisited the historical location we had used to delineate the unit in our proposed critical habitat rule and found that the site was actually south of where it was originally mapped. After visiting the site, we discovered more suitable habitat in the area than previously known. We located two additional sites nearby during subsequent field surveys (Service 2011, pp. 5–12). The unit is 61 percent privately owned and 39 percent owned by the BLM. This unit is currently occupied. Several roads run through the unit close to *Phacelia submutica* sites. The entire unit is within the Westwide Energy corridor and one grazing allotment. Aside from the changes described here, the unit description from our proposed critical habitat rule still applies (76 FR 45078).

Unit 9. Anderson Gulch

We are proposing to increase the size of Unit 9, Anderson Gulch, from 301 ac (122 ha) to 341 ac (138 ha). Surveys during the spring of 2011 extended the known sites to the north (CNHP 2011, pp. 1–3, spatial data). To accommodate this situation, we are proposing the boundary changes described here. The unit comprises both State and private lands in Mesa County, Colorado. Within the unit, 56 percent of the lands are managed by the Colorado Division of Wildlife, within the Plateau Creek State Wildlife Area, and 44 percent is private. This unit is currently occupied. Aside from the changes described here, the unit description from our proposed critical habitat rule still applies (76 FR 45078).

Additional Areas Considered for Exclusion

Penstemon debilis Unit 3. Mount Callahan

Three of the four viable (large and robust) populations of *Penstemon debilis* are on lands owned by Oxy, all within the proposed Unit 3 (Mount Callahan). Conservation of the species cannot occur without cooperation from Oxy. *P. debilis* populations protected through Colorado Natural Areas agreements may receive better protection than they would otherwise receive through the protections of the Act on private lands. Given this, and to facilitate our partnership, in our original critical habitat proposal we announced that we would consider the exclusion of areas on Oxy lands that are protected under a voluntary conservation agreement with the Colorado Natural Areas Program (CNAP).

We are now considering excluding under section 4(b)(2) of the ESA additional lands for *Penstemon debilis* based on the efforts of the landowner (OXY) and a potential agreement with CNAP. Oxy is working with CNAP to expand their agreement to include the Mt. Logan Mine area so that all three viable *Penstemon debilis* populations on Oxy lands are protected (see figure below) (Oxy 2010, pp. 1–6). If designated, we also would consider excluding this area. For areas outside these Natural Areas, Oxy also is working to develop best management practices to protect adjacent habitat and the pollinators found in these adjacent habitats. If these best management practices are adequately described in their Natural Areas agreement, we also would consider excluding Oxy lands that are covered by these best management practices outside of suitable habitat (barren cliff areas). If further protections were provided for suitable habitat, we would consider this in our decision. We do not yet know where the boundaries of the potential Natural Area at Mt. Logan Mine would be so we have depicted this area with a generalized map. We also have delineated, to the best of our abilities, suitable habitat for *P. debilis* in the map of Unit 3.

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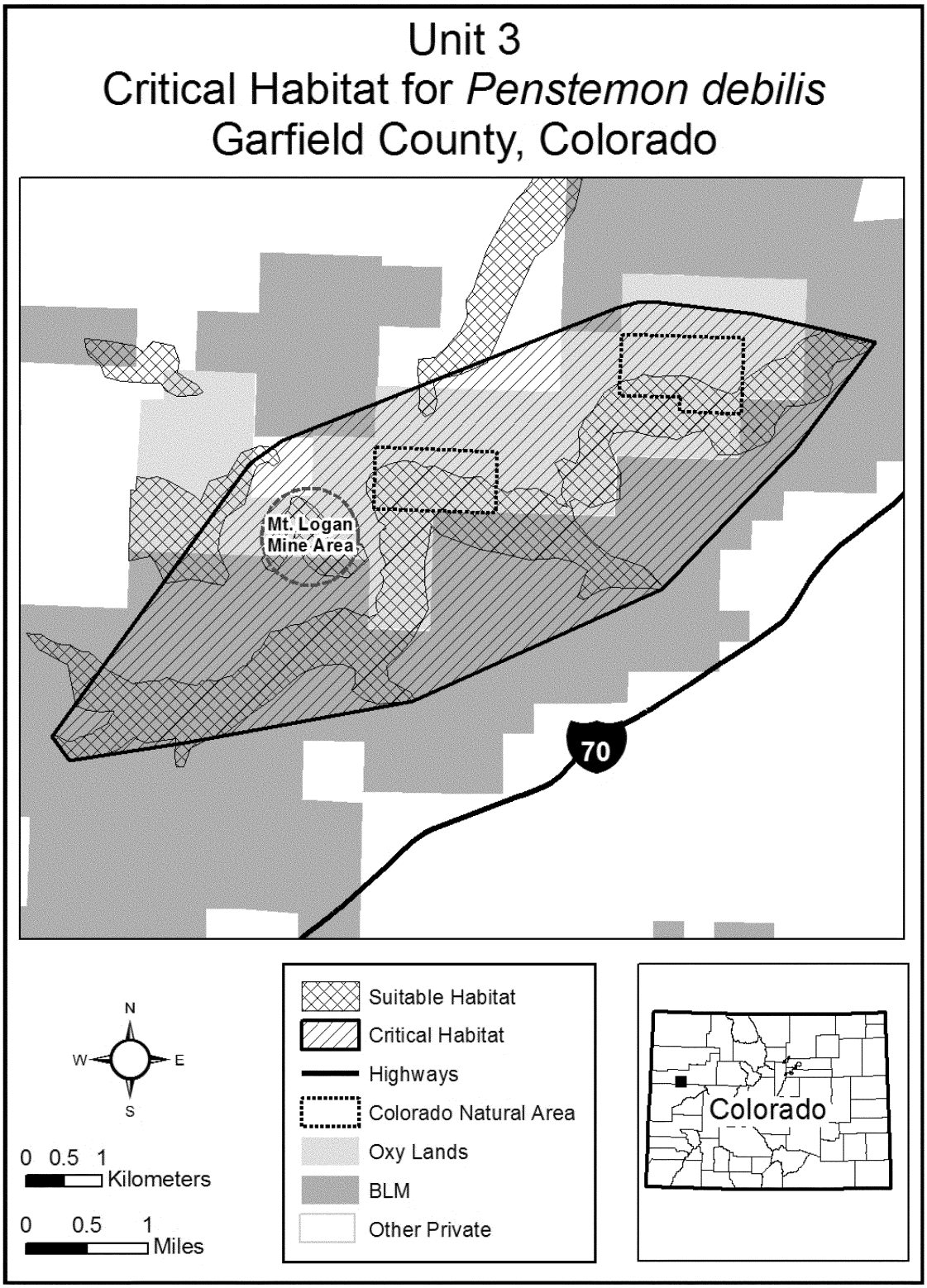

Figure. Critical habitat Unit 3 for *Penstemon debilis* showing Mt. Logan Mine Area and areas under Colorado Natural Areas Program agreement.

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Nonsubstantive Changes to § 17.12(h)

In the July 27, 2011, proposed rule, the table entries for the List of Endangered and Threatened Plants at § 17.12(h) contained a small formatting error. The scientific names for *Ipomopsis polyantha* and *Penstemon debilis* were presented in Roman type; however, they should have been presented in italics. We are correcting this error in this revised proposed rule.

Required Determinations—Amended

In our July 27, 2011, proposed rule (76 FR 45078), we indicated that we would defer our determination of compliance with several statutes and Executive Orders (EOs) until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data in making these determinations. In this document, we affirm the information in our proposed rule concerning E.O. 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Paperwork Reduction Act, E.O. 12866 and E.O. 12988 (Clarity of the Rule), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on the DEA data, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), E.O. 13211 (Energy Supply, Distribution, or Use), and the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under the rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for *Ipomopsis polyantha, Penstemon debilis,* and *Phacelia submutica* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (e.g., energy development, transportation projects, agriculture and grazing, recreation). In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat affects activities conducted, funded, permitted, or authorized by Federal agencies.

Under the Act, designation of critical habitat only affects activities carried out, funded, or permitted by Federal agencies. If we finalize the proposed critical habitat designation, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

Some kinds of activities are unlikely to have any Federal involvement and so would not result in any additional effects under the Act. If there is a Federal action, Federal agencies will be required to consult with us under section 7 of the Act on activities they fund, permit, or carry out that may affect critical habitat. If we conclude in a biological opinion that a proposed action is likely to destroy or adversely modify critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid destroying or adversely modifying critical habitat.

Within the proposed critical habitat designation, the types of actions or authorized activities that we have identified as potential concerns and that may be subject to consultation under section 7 if there is a Federal action includes: Energy development (oil and gas); transportation projects; agriculture and grazing; and recreation. As discussed in Appendix A of the DEA of the activities addressed in the analysis, only oil and gas, transportation, and recreational activities are expected to experience incremental, administrative consultation costs that may be borne by small businesses.

Any existing and planned projects, land uses, and activities that could affect the proposed critical habitat but have no Federal involvement would not require section 7 consultation with the Service, so they are not restricted by the requirements of the Act. Federal agencies may need to reinitiate a previous consultation if discretionary involvement or control over the Federal action has been retained or is authorized by law and the activities may affect critical habitat.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for *Ipomopsis polyantha, Penstemon debilis,* and *Phacelia submutica.* Please refer to our DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts; we will summarize key points of the analysis below.

The DEA, and its associated initial regulatory flexibility analysis, estimate that total potential incremental

economic impacts in areas proposed as critical habitat for all three species over the next 20 years will be $967,000 to $14.8 million, assuming a 7-percent discount rate. The largest contributor to the incremental costs is impacts to oil and gas development, which represent approximately 90 percent of incremental impacts in the low-cost scenario and 99 percent of impacts in the high-cost scenario. Incremental impacts to oil and gas development range from $868,000 to $14.7 million, assuming a 7-percent discount rate. These impacts are related to future oil and gas development that occurs in areas greater than 100 meters from known *Phacelia submutica* occurrences and greater than 1,000 meters from known *Penstemon debilis* occurrences. Similar to the baseline impacts, the large range in incremental impacts is due to uncertainty regarding the level and distribution of future oil and gas development.

Incremental impacts to transportation projects are estimated to be $12,700, assuming a 7-percent discount rate. Incremental impacts to recreational activities are estimated to be $32,500, assuming a 7-percent discount rate. The incremental impacts to transportation and recreational activities are limited to the administrative cost of consultation. Incremental impacts to agriculture and grazing are estimated to be $53,200, assuming a 7-percent discount rate.

Small entities represent 60 percent of all entities in the oil and gas development industry that may be affected. The analysis expects conservation efforts for the three plants to affect companies that are involved with drilling for oil and gas and that lease or plan to lease Federal lands. Although we predict that drilling activity will not be precluded by the designation, we anticipate requesting that drilling companies undertake project modifications to reduce potential impacts to the habitat. The costs of implementing these project modifications are one impact of the regulation. In addition, affected companies will incur administrative costs associated with the section 7 consultation process.

The DEA estimates that between 0.23 and 5.1 projects are undertaken in the study area (total number of projects divided by 20 years). We multiply these projects by the percentage of small entities in these counties, or approximately 60 percent, to identify the annual number of projects likely to be undertaken by small entities (0.14 to 3.06 projects annually). Some of these projects will only incur incremental administrative costs because they are located close to existing plants. In these cases, the project modification costs will be incurred regardless of the designation of critical habitat. Projects experiencing the highest annual incremental costs are located in unoccupied areas. We multiply the per-project costs in these unoccupied areas by the total number of annual projects undertaken by small entities and then divide by the number of affected small entities to estimate per-entity costs. These impacts are then compared to average annual sales per small business in the sector. On average, annual incremental impacts per small drilling company represent 0.01 to 0.27 percent of small developers' annual average sales.

In summary, less than two to four small entities may be affected annually by the proposed rule. These entities will likely experience costs equivalent to less than 1 percent of annual revenues. Importantly, these estimates assume each well pad is drilled by a separate entity. In the case that one small company drills more well pads than predicted, impacts to that company are underestimated, and the annual number of affected entities is overstated.

Executive Order 13211—Energy Supply, Distribution, and Use

E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The Office of Management and Budget's guidance for implementing this Executive order outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to no regulatory action. Critical habitat designation for the three plants is anticipated to affect oil and gas activities. However, the Service is more likely to recommend a series of project modifications that will allow for work within critical habitat, rather than complete avoidance of critical habitat. Therefore, reductions in oil and natural gas production are not anticipated. Furthermore, given the small fraction of projects affected, less than one to approximately two per year, project modification costs are not anticipated to increase the cost of energy production or distribution in the United States in excess of 1 percent. Thus, none of the nine threshold levels of impact listed above is exceeded. Therefore, designation of critical habitat is not expected to lead to any adverse outcomes (such as a reduction in oil and natural gas production or distribution), and a Statement of Energy Effects is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments,'' with two exceptions. First, it excludes ''a condition of federal assistance.'' Second, it excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of

critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the DEA of the proposed designation of critical habitat for *Ipomopsis polyantha, Penstemon debilis,* and *Phacelia submutica,* we do not believe that the rule would significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The DEA concludes that incremental impacts may occur due to project modifications and administrative costs of consultation that may need to be made for oil and gas, transportation, grazing, and recreational activities; however, these are not expected to affect small governments to the extent described above. Consequently, we do not believe that the proposed critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

References Cited

A complete list of all references we cited in the proposed rule and in this document is available on the Internet at *http://www.regulations.gov* or by contacting the Colorado Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this document are the staff members of the Western Colorado Ecological Services Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 76 FR 45078, July 27, 2011, as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.12 [Amended]

2. In § 17.12(h), amend the entries for ''*Ipomopsis polyantha''* and ''*Penstemon debilis''* under ''Flowering Plants'' in the List of Endangered and Threatened Plants by removing the words ''Ipomopsis polyantha'' and ''Penstemon debilis'' and adding in their place the words ''*Ipomopsis polyantha''* and ''*Penstemon debilis''.*

3. In § 17.96, in paragraph (a), amend the entry for ''*Phacelia submutica* (DeBeque phacelia)'' by revising units 6, 7, and 9, and the entry for ''*Ipomopsis polyantha* (Pagosa skyrocket)'' by revising units 2 and 4, to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Hydrophyllaceae: *Phacelia submutica* (DeBeque phacelia)

* * * * *

(11) Unit 6: Mesa County, Colorado.

(i) Land bounded by the following UTM NAD83, zone 13N coordinates (E,N): 224560.31, 4351994.12; 224551.61, 4351993.51; 224545.14, 4351993.94; 224534.23, 4351994.73; 224343.42, 4352006.84; 224341.20, 4352007.01; 224332.52, 4352007.77; 224315.35, 4352010.79; 224306.93, 4352013.05; 224298.61, 4352015.67; 224290.55, 4352019.01; 224282.65, 4352022.70; 224267.56, 4352031.41; 224260.42, 4352036.41; 224253.50, 4352041.72; 224247.06, 4352047.61; 224240.90, 4352053.78; 224229.70, 4352067.13; 224224.70, 4352074.27; 224220.01, 4352081.63; 224215.98, 4352089.37; 224212.30, 4352097.26; 224208.96, 4352105.32; 224206.34, 4352113.64; 224204.08, 4352122.06; 224201.05, 4352139.23; 224200.29, 4352147.91; 224199.93, 4352154.95; 224629.91, 4354119.91; 224136.18, 4355951.10; 224136.42, 4355958.96; 224137.28, 4355966.78; 224138.75, 4355974.51; 224140.82, 4355982.09; 224143.49, 4355989.49; 224146.73, 4355996.66; 224167.76, 4356038.72; 224169.66, 4356042.35; 225797.71, 4358990.45; 225803.34, 4358999.46; 225808.33, 4359006.60; 225819.54, 4359019.96; 225825.70, 4359026.12; 225832.13, 4359032.01; 225839.05, 4359037.32; 225846.19, 4359042.32; 225861.29, 4359051.04; 225869.19, 4359054.72; 225877.25, 4359058.06; 225885.57, 4359060.68; 225893.99, 4359062.94; 225911.15, 4359065.97; 225919.84, 4359066.73; 225928.55, 4359067.11; 225937.27, 4359066.73; 225945.95, 4359065.97; 225963.12, 4359062.94; 225971.53, 4359060.68; 225979.85, 4359058.06; 225987.91, 4359054.72; 225995.81, 4359051.04; 226010.91, 4359042.32; 226018.05, 4359037.32; 226024.97, 4359032.01; 226031.40, 4359026.12; 226037.56, 4359019.96; 226048.77, 4359006.60; 226053.77, 4358999.46; 226058.46, 4358992.11; 226062.48, 4358984.37; 226066.17, 4358976.47; 226069.51, 4358968.41; 226072.13, 4358960.09; 226074.38, 4358951.67; 226077.41, 4358934.50; 226078.17, 4358925.82; 226078.55, 4358917.11; 226078.17, 4358908.39; 226077.41, 4358899.71; 226075.73, 4358888.22; 224674.17, 4352093.97; 224672.83, 4352088.29; 224671.70, 4352084.08; 224665.74, 4352067.70; 224663.89, 4352063.75; 224659.87, 4352056.01; 224655.18, 4352048.65; 224652.68, 4352045.08; 224647.37, 4352038.16; 224641.48, 4352031.73; 224638.39, 4352028.65; 224625.04, 4352017.44; 224621.47, 4352014.94; 224614.11, 4352010.26; 224606.38, 4352006.23; 224602.43, 4352004.39; 224594.37, 4352001.05; 224585.93, 4351998.98; 224577.53, 4351996.65; 224568.97, 4351995.03; 224560.31, 4351994.12; and returning to 224560.31, 4351994.12.

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(12) Unit 7: Mesa County, Colorado.

(i) Land bounded by the following UTM NAD83, zone 13N coordinates (E,N): 223172.45, 4348678.18; 223164.10, 4348677.06; 223155.69, 4348676.65; 223147.28, 4348676.96; 223138.92, 4348677.98; 223130.67, 4348679.70; 223122.61, 4348682.12; 223114.77, 4348685.22; 223107.23, 4348688.97; 223105.08, 4348690.05; 221446.80, 4349594.77; 221439.42, 4349599.22; 221432.45, 4349604.28; 221425.95, 4349609.93; 221419.95, 4349616.11; 221414.51, 4349622.79; 221409.67, 4349629.91; 221405.45, 4349637.43; 221401.90, 4349645.27; 221399.04, 4349653.40; 221396.88, 4349661.74; 221395.45, 4349670.23; 221394.76, 4349678.82; 221394.81, 4349687.43; 221395.60, 4349696.01; 221397.13, 4349704.49; 221399.38, 4349712.80; 221402.33, 4349720.89; 221405.97, 4349728.70; 221410.27, 4349736.16; 221415.20, 4349743.23; 221420.72, 4349749.84; 221426.78, 4349755.96; 221433.35, 4349761.53; 221440.38, 4349766.52; 221528.06, 4349823.24; 221530.29, 4349824.64; 222690.07, 4350532.12; 222697.89, 4350536.43; 222706.07, 4350540.02; 222714.53, 4350542.87; 222723.22,

4350544.95; 222732.06, 4350546.24; 222740.97, 4350546.75; 222749.90, 4350546.45; 222758.76, 4350545.36; 222767.49, 4350543.49; 222776.02, 4350540.84; 222784.28, 4350537.44; 222792.21, 4350533.32; 222799.73, 4350528.51; 222806.80, 4350523.04; 222813.34, 4350516.97; 222819.32, 4350510.34; 222824.69, 4350503.20; 222829.40, 4350495.61; 222833.41, 4350487.63; 222836.69, 4350479.32; 222839.22, 4350470.76; 223249.33, 4348810.93; 223251.95, 4348800.61; 223253.68, 4348792.17; 223254.68, 4348783.61; 223254.94, 4348774.99; 223254.45, 4348766.39; 223253.22, 4348757.86; 223251.26, 4348749.46; 223248.58, 4348741.27; 223245.20, 4348733.34; 223241.15, 4348725.74; 223236.45, 4348718.51; 223231.15, 4348711.71; 223225.28, 4348705.40; 223218.89, 4348699.62; 223212.02, 4348694.41; 223204.73, 4348689.82; 223197.07, 4348685.87; 223189.10, 4348682.60; 223180.87, 4348680.03; 223172.45, 4348678.18; and returning to 223172.45, 4348678.18.

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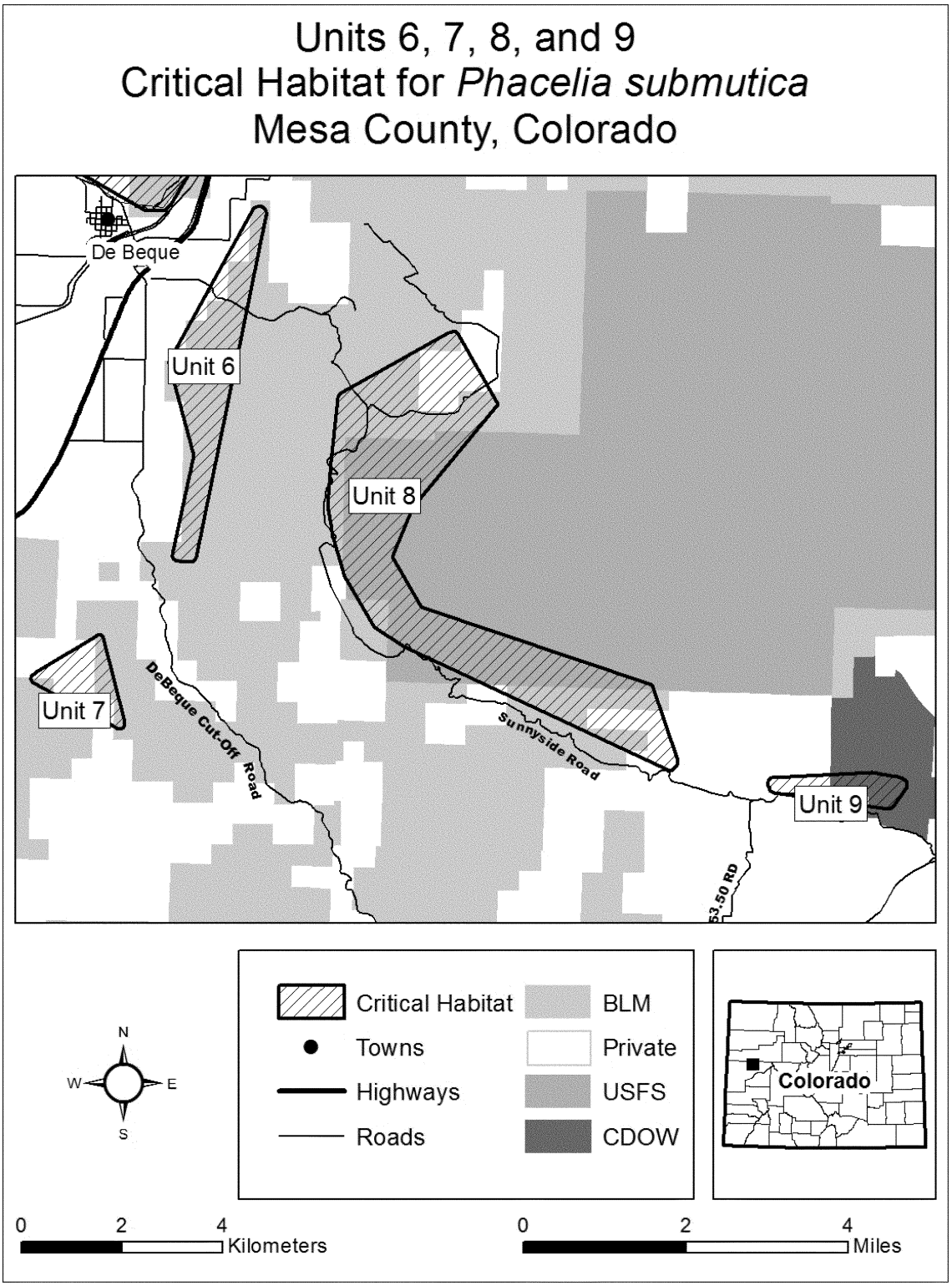
(14) Unit 9: Mesa County, Colorado.

(i) Land bounded by the following UTM NAD83, zone 13N coordinates (E,N): 238464.91, 4347092.87; 238447.55, 4347091.35; 238440.44, 4347091.83; 238436.82, 4347092.11; 238430.10, 4347092.73; 236172.30, 4347409.84; 236160.33, 4347412.28; 236156.12, 4347413.40; 236147.80, 4347416.03; 236139.74, 4347419.37; 236135.79, 4347421.21; 236120.70, 4347429.92; 236117.13, 4347432.42; 236110.20, 4347437.73; 236103.77, 4347443.63; 236100.69, 4347446.71; 236089.49, 4347460.06; 236086.99, 4347463.63; 236082.30, 4347470.99; 236078.27, 4347478.73; 236076.43, 4347482.68; 236074.59, 4347486.87; 236049.56, 4347547.66; 236045.44, 4347559.85; 236044.31, 4347564.06; 236042.42, 4347572.58; 236041.28, 4347581.23; 236040.90, 4347585.57; 236040.90, 4347603.00; 236041.28, 4347607.34; 236042.42, 4347615.99; 236044.31, 4347624.51; 236045.44, 4347628.72; 236051.40, 4347645.10; 236053.24, 4347649.05; 236061.96, 4347664.14; 236064.46, 4347667.71; 236069.77, 4347674.63; 236075.66, 4347681.07; 236078.74, 4347684.15; 236085.17, 4347690.04; 236092.10, 4347695.35; 236095.67, 4347697.85; 236110.76, 4347706.57; 236114.71, 4347708.41; 236131.09, 4347714.37; 236135.30, 4347715.50; 236143.82, 4347717.39; 236152.47, 4347718.52; 236156.81, 4347718.90; 236160.40, 4347719.15; 238092.65, 4347818.34; 238097.77, 4347818.47; 238114.80, 4347817.01; 238597.16, 4347733.65; 238602.61, 4347732.55; 238604.85, 4347732.03; 238617.20, 4347728.33; 238729.89, 4347686.46; 238741.46, 4347681.30; 238745.08, 4347679.41; 238748.68, 4347677.43; 238761.06, 4347668.98; 238778.98, 4347654.68; 238784.95, 4347649.51; 238790.51, 4347643.88; 238795.59, 4347637.84; 238800.19, 4347631.41; 238804.26, 4347624.63; 238807.79, 4347617.56; 238809.34, 4347614.11; 238812.48, 4347606.26; 238814.95, 4347598.18; 238816.72, 4347589.91; 238817.79, 4347581.52; 238818.15, 4347573.07; 238818.15, 4347568.42; 238817.82, 4347560.33; 238816.84, 4347552.30; 238815.21, 4347544.37; 238812.95, 4347536.59; 238810.06, 4347529.03; 238808.51, 4347525.41; 238803.20, 4347514.80; 238798.23, 4347507.04; 238536.17, 4347136.70; 238531.84, 4347131.01; 238527.10, 4347125.65; 238521.99, 4347120.64; 238516.54, 4347116.00; 238510.78, 4347111.77; 238507.54, 4347109.57; 238501.31, 4347105.66; 238497.71, 4347104.41; 238490.32, 4347100.70; 238482.63, 4347097.65; 238474.70, 4347095.31; 238470.96, 4347094.36; 238464.91, 4347092.87; and returning to 238464.91, 4347092.87.

(ii) **Note:** Map of Units 6, 7, 8, and 9 of critical habitat for *Phacelia submutica* follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

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Family Polemoniaceae: *Ipomopsis polyantha* (Pagosa skyrocket)

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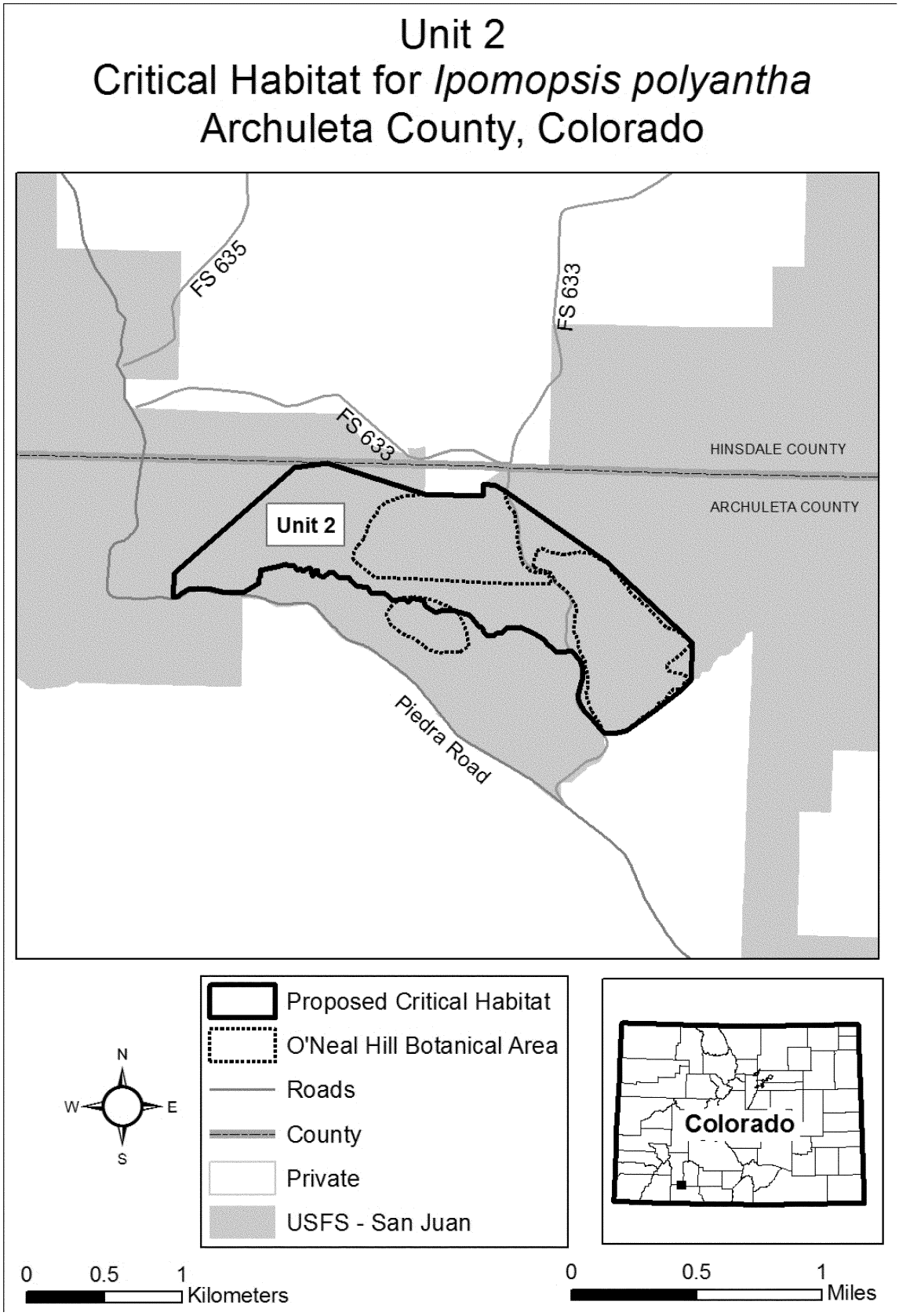
(7) Unit 2: Archuleta County, Colorado.

(i) Land bounded by the following UTM NAD83, zone 13N coordinates (E,N): 306219.79, 4143158.27; 306228.72, 4143313.61; 307003.79, 4143989.39; 307211.97, 4144018.22; 307840.95, 4143816.88; 308210.39, 4143809.74; 308215.75, 4143886.66; 308293.59, 4143872.46; 308346.60, 4143847.52; 309004.29, 4143385.20; 309534.52, 4142892.90; 309558.00, 4142861.72; 309548.26, 4142623.97; 309546.44, 4142621.82; 309498.44, 4142571.81; 309318.44, 4142432.81; 309132.45, 4142298.80; 309124.45, 4142295.80; 309054.45, 4142279.80; 309046.45, 4142278.80; 309016.45, 4142278.80; 308991.49, 4142282.38; 308922.13, 4142364.20; 308858.63, 4142428.49; 308830.85, 4142479.29; 308822.12, 4142519.77; 308830.05, 4142563.43; 308856.25, 4142645.19; 308853.87, 4142696.78; 308836.40, 4142745.99; 308782.18, 4142812.18; 308714.17, 4142804.73; 308676.86, 4142811.08; 308653.05, 4142836.48; 308626.85, 4142854.74; 308606.22, 4142884.90; 308539.54, 4142924.59; 308456.99, 4142965.07; 308362.53, 4142957.92; 308341.10, 4142927.76; 308301.41, 4142926.97; 308278.40, 4142907.12; 308241.88, 4142909.50; 308220.45, 4142925.38; 308203.78, 4142965.07; 308185.36, 4142971.60; 308169.65, 4142988.02; 308126.10, 4143042.28; 308033.92, 4143066.67; 307948.29, 4143076.16; 307909.78, 4143060.13; 307844.10, 4143097.25; 307829.82, 4143133.66; 307754.15, 4143153.65; 307732.02, 4143122.24; 307707.74, 4143147.94; 307632.07, 4143137.23; 307597.80, 4143170.07; 307574.32, 4143187.15; 307556.42, 4143182.30; 307489.41, 4143186.52; 307474.33, 4143216.69; 307399.12, 4143231.89; 307363.99, 4143263.52; 307348.91, 4143288.12; 307325.10, 4143278.60; 307285.41, 4143283.36; 307256.84, 4143311.14; 307229.85, 4143317.49; 307186.99, 4143286.54; 307149.68, 4143300.82; 307152.86, 4143331.78; 307128.25, 4143327.02; 307117.93, 4143292.89; 307098.88, 4143346.07; 307074.40, 4143334.28; 307056.81, 4143323.05; 307037.76, 4143341.31; 307018.71, 4143328.61; 306995.69, 4143365.91; 306972.34, 4143356.44; 306943.07, 4143368.01; 306883.21, 4143353.82; 306781.41, 4143329.68; 306785.35, 4143297.65; 306772.65, 4143280.19; 306771.86, 4143247.64; 306763.12, 4143238.91; 306678.98, 4143190.32; 306628.81, 4143188.23; 306534.05, 4143193.11; 306467.85, 4143210.53; 306379.36, 4143213.32; 306319.43, 4143206.35; 306279.02, 4143188.23; 306253.93, 4143163.15; 306219.79, 4143158.27; and returning to 306219.79, 4143158.27.

(ii) **Note:** Map of Unit 2 of critical habitat for *Ipomopsis polyantha* follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

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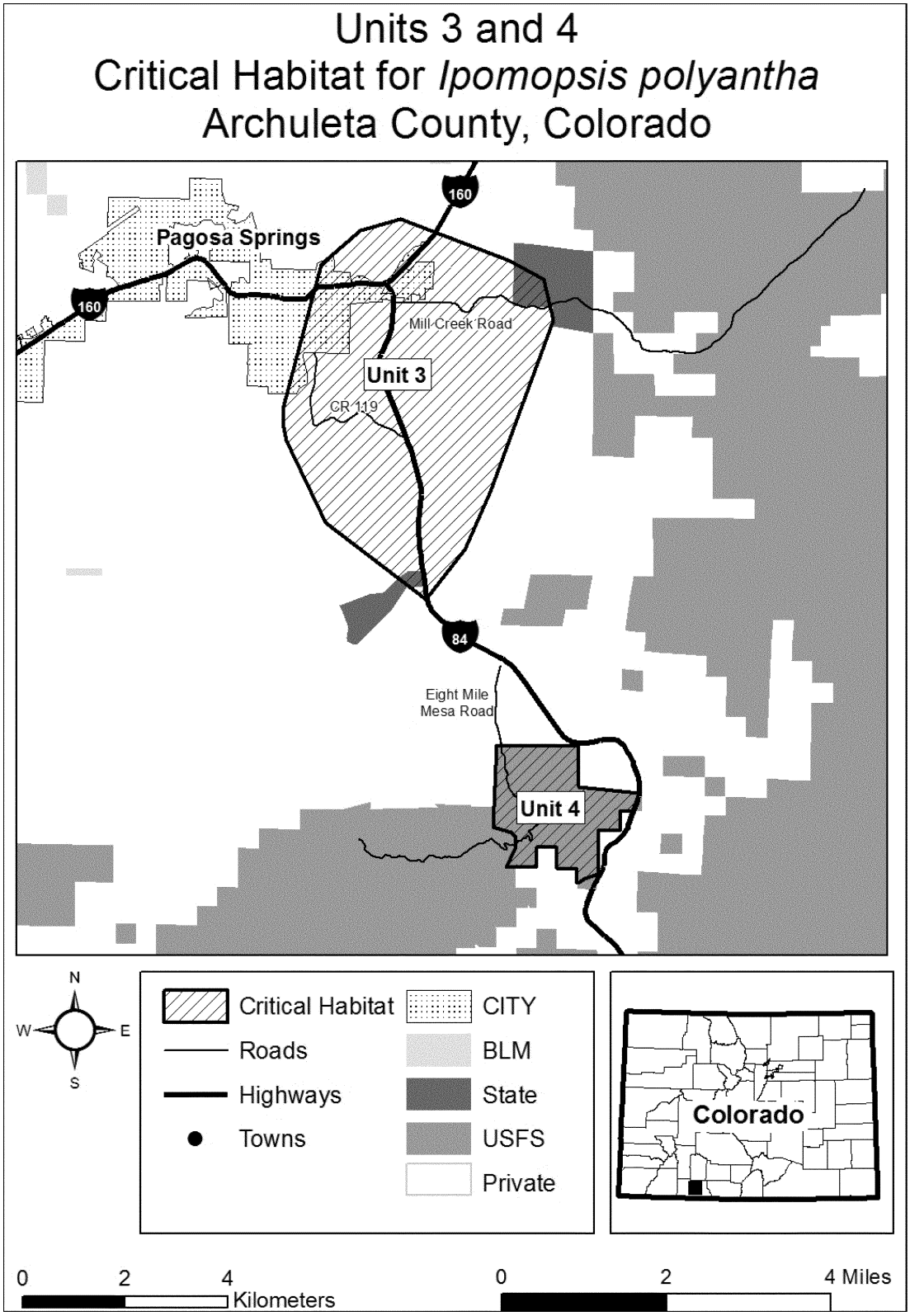
(9) Unit 4: Archuleta County, Colorado.

(i) Land bounded by the following UTM NAD83, zone 13N coordinates (E,N): 325341.89, 4116396.61; 325387.72, 4117588.25; 326991.87, 4117571.07; 326986.14, 4116780.45; 328165.61, 4116660.32; 328052.33, 4116301.10; 327816.85, 4116316.40; 327799.67, 4115921.09; 327392.90, 4115932.55; 327375.84, 4115058.23; 327212.37, 4115018.58; 327107.67, 4114981.94; 327017.91, 4114906.40; 326959.34, 4114892.94; 326963.22, 4115164.85; 326567.91, 4115187.77; 326562.18, 4115588.81; 326172.61, 4115594.53; 326161.15, 4115204.96; 325777.30, 4115210.69; 325576.78, 4115199.23; 325737.20, 4115554.43; 325754.39, 4115795.05; 325668.45, 4115886.72; 325324.70, 4115995.57; 325341.89, 4116396.61; and returning to 325341.89, 4116396.61.

(ii) **Note:** Map of Units 3 and 4 of critical habitat for *Ipomopsis polyantha* follows:

BILLING CODE 4310–55–P



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Dated: March 15, 2012.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–7087 Filed 3–26–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2011–0050; 4500030114]

RIN 1018–AW92

Endangered and Threatened Wildlife and Plants; Endangered Status for the Alabama Pearlshell, Round Ebonyshell, Southern Sandshell, Southern Kidneyshell, and Choctaw Bean, and Threatened Status for the Tapered Pigtoe, Narrow Pigtoe, and Fuzzy Pigtoe; With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on the October 4, 2011, rule proposing endangered status for the Alabama pearlshell (*Margaritifera marrianae*), round ebonyshell (*Fusconaia rotulata*), southern sandshell (*Hamiota australis*), southern kidneyshell (*Ptychobranchus jonesi*), and Choctaw bean (*Villosa choctawensis*), and threatened status for the tapered pigtoe (*Fusconaia burkei*), narrow pigtoe (*Fusconaia escambia*), and fuzzy pigtoe (*Pleurobema strodeanum*), and designation of their critical habitat, under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for these eight species and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated DEA, and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: We will consider comments received or postmarked on or before April 26, 2012. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:* You may obtain copies of the proposed rule and draft economic analysis on the Internet at *http://www.regulations.gov* at Docket Number FWS–R4–ES–2011–0050, or by mail from the Panama City Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Comment submission: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for Docket No. FWS–R4–ES–2011–0050, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2011–0050; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Don Imm, Field Supervisor, U.S. Fish and Wildlife Service, Panama City Ecological Services Field Office, 1601 Balboa Avenue, Panama City, FL 32405; telephone 850–769–0552; facsimile 850–763–2177. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed designation of critical habitat for these eight mussels that was published in the **Federal Register** on October 4, 2011 (76 FR 61482), our DEA of the proposed designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The distribution of the eight mussels;

(b) The amount and distribution of habitat for these eight mussels; and

(c) What areas occupied by these species at the time of listing contain features essential for the conservation of the species that we should include in the designation and why, and

(d) What areas not occupied at the time of listing are essential to the conservation of these species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(5) The projected and reasonably likely impacts of climate change on these eight mussels and on the critical habitat we are proposing.

(6) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

(7) Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

(8) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

If you submitted comments or information on the proposed rule (76 FR 61482) during the initial comment period from October 4, 2011, to December 5, 2011, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning designation of critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in

the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2011–0050, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Panama City Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section, above). You may obtain copies of the proposed rule and the DEA on the Internet at *http://www.regulations.gov* at Docket Number FWS–R4–ES–2011–0050, or by mail from the Panama City Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section, above).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the Alabama pearlshell, round ebonyshell, southern sandshell, southern kidneyshell, Choctaw bean, tapered pigtoe, narrow pigtoe, and fuzzy pigtoe in this document. For more information on previous Federal actions concerning these eight species, or their biology and habitat needs, refer to the proposed listing and designation of critical habitat published in the **Federal Register** on October 4, 2011 (76 FR 61482). This document is available online at *http://www.regulations.gov* (at Docket Number FWS–R4–ES–2011–0050) or from the Panama City Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section, above).

Previous Federal Actions

On October 4, 2011, we published a proposed rule to list and designate critical habitat for these species (76 FR 61482). We proposed to designate approximately 2,406 kilometers (km) (1,495 miles (mi)) of stream and river channels within Bay, Escambia, Holmes, Jackson, Okaloosa, Santa Rosa, Walton, and Washington Counties, Florida; and Barbour, Bullock, Butler, Coffee, Conecuh, Covington, Crenshaw, Dale, Escambia, Geneva, Henry, Houston, Monroe, and Pike Counties, Alabama. We will submit for publication in the **Federal Register** a final critical habitat designation for these eight species on or before October 4, 2012.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of these species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, the economic impacts of designation; whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of these eight mussels, the benefits of critical habitat include public awareness of the presence of these species and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for these species due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation (DEA), which is available for review and comment (see **ADDRESSES** section, above).

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for these eight mussels. The DEA separates conservation measures into two distinct categories according to ''without critical habitat'' and ''with critical habitat'' scenarios. The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections otherwise afforded to the eight mussels (e.g., under the Federal listing and other Federal, State, and local regulations). The ''with critical habitat'' scenario describes the incremental impacts specifically due to designation of critical habitat for these species. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the DEA, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (i.e., incremental impacts). For a further description of the methods of the analysis, see Chapter 2, ''Framework for the Analysis,'' of the DEA.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for these eight mussels over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe. It identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing. The DEA quantifies economic impacts of mussel conservation efforts associated with the following categories of activity: (1) Impoundments, dams, and diversions; (2) dredging, channelization, and in-stream mining; (3) transportation and utilities; (4) residential and commercial development; (5) timber management, agriculture, and grazing; and (6) oil wells/drilling.

Based on discussions with State and local regulatory authorities, including Alabama Department of Environmental Management, Florida Department of Environmental Protection, and Northwest Florida Water Management District, land and water management practices are not expected to change due to the designation of critical habitat.

The present value of the total incremental cost of critical habitat designation is estimated at $1.41 million over 20 years assuming a 7 percent discount rate, or $125,000 on an annualized basis. Transportation and utility activities are likely to be subject to the greatest incremental impacts at $1.02 million over 20 years, followed by development at $62,300; timber management, agriculture, and grazing activities at $56,600; and impoundments, dams, and diversions at $13,100 (present values over 20 years assuming a 7 percent discount rate). No incremental impacts to dredging, channelization, and in-stream mining are anticipated because these activities are not expected to occur within proposed critical habitat boundaries. No incremental impacts to oil wells or drilling operations are anticipated because there is no Federal nexus for these activities that would require section 7 consultation. Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of these species.

Required Determinations—Amended

In our October 4, 2011, proposed rule (76 FR 61482), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on the DEA data, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), E.O. 13211 (Energy, Supply, Distribution, or Use), and the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rule making.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for these species would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as residential or commercial development entities. In order to determine whether it is appropriate for our agency to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the these eight mussels are present, Federal agencies already are required to consult with us under section 7 of the Act on

activities they fund, permit, or implement that may affect these species. If we finalize the proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the eight mussels. This analysis estimates that six small governments (counties) may be affected by the rule. The affected counties represent 9 percent of small counties in Alabama and Florida. We anticipate approximately three to four counties could be affected each year, with an impact of approximately $875 per county. Assuming annual county tax revenues of at least $1 million, per county impacts represent approximately 0.02 percent of annual revenues. Approximately 20 small development-related entities are likely to incur administrative costs associated with section 7 consultations. Assuming that all of these entities are small, they represent approximately 0.04, or less than one, percent of all small developers and homebuilders in the affected counties. Annualized impacts per entity are approximately $48, which represents less than one percent of annual, per entity revenues. Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts to small businesses.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

As outlined in the DEA and in the amended RFA determination above, we do not believe that this rule will significantly or uniquely affect small governments. It will not produce a Federal mandate of $100 million or greater in any year, and therefore is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on state or local governments. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. After careful review of the DEA we have determined that a Small Government Agency Plan is not required.

Energy, Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The Office of Management and Budget provides guidance for implementing this executive order, and outlines the situations that are considered to have a ''significant energy effect'' when compared with the regulatory action under consideration. As outlined in the DEA, we do not anticipate impacts to oil wells and drilling activities in the study area (critical habitat reaches and associated watersheds). Thus, we do not anticipate a ''significant energy effect'' from this rulemaking.

Authors

The primary authors of this notice are the staff members of the Panama City Ecological Services Field Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 16, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–7200 Filed 3–26–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120109034–2171–01]

RIN 0648–BB62

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 47

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to approve Framework Adjustment 47 (Framework 47) to the Northeast (NE) Multispecies Fishery Management Plan (FMP) and to implement its measures through the proposed regulations. Framework 47 was developed and adopted by the New England Fishery Management Council (Council) based on the biennial review process established in the NE Multispecies FMP to develop annual catch limits (ACLs) and revise management measures necessary to rebuild overfished groundfish stocks and achieve the goals and objectives of the FMP. NMFS also proposes management measures and revisions to existing regulations that are not included in Framework 47, including common pool management measures for fishing year (FY) 2012, modification of the Ruhle trawl definition, modification of the method used to estimate fillets or parts of fish landed for at-home consumption, and clarification of the regulations for charter/party and recreational groundfish vessels fishing in groundfish closed areas. The proposed regulations are intended to prevent overfishing, rebuild overfished stocks, achieve optimum yield, and ensure that management measures are based on the best available scientific information.

DATES: Comments must be received by April 11, 2012.

ADDRESSES: You may submit comments on this document, identified by ''NOAA–NMFS–2012–0004,'' by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal,

first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0004 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.

• *Mail:* Submit written comments to Daniel S. Morris, Acting Regional Administrator, 55 Great Republic Drive, Gloucester, MA 01930.

• *Fax:* (978) 281–9135; Attn: Sarah Heil.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

An environmental assessment (EA) was prepared for Framework 47 that describes the proposed action and other considered alternatives, as well as an analysis of the impacts of the proposed measures and alternatives. Copies of Framework 47, the draft EA, its Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Act (IRFA) analysis prepared by the Council are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The Framework 47 EA/RIR/IRFA are also accessible via the Internet at *http://www.nefmc.org/nemulti/index.html* or *http://www.nero.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Sarah Heil, Fishery Policy Analyst, phone: 978–281–9257, fax: 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The NE Multispecies FMP specifies management measures for 16 species in Federal waters off the New England and Mid-Atlantic coasts, including both large-mesh and small-mesh species. Small-mesh species include silver hake (whiting), red hake, offshore hake, and ocean pout, and large-mesh species include Atlantic cod, haddock, yellowtail flounder, pollock, American plaice, witch flounder, white hake, windowpane flounder, Atlantic halibut, winter flounder, redfish, and Atlantic wolffish. Large-mesh species, which are referred to as ''regulated species,'' are divided into 19 fish stocks, and along with ocean pout, comprise the groundfish complex.

Amendment 16 to the NE Multispecies FMP (Amendment 16) established a process for setting acceptable biological catches (ABCs) and ACLs for regulated species and ocean pout, as well as distributing the available catch among the various components of the groundfish fishery. Amendment 16 also established accountability measures (AMs) for the 20 groundfish stocks in order to prevent overfishing of these stocks and correct or mitigate any overages of the ACLs. Framework 44 to the NE Multispecies FMP (Framework 44) set the ABCs and ACLs for FYs 2010–2012. In 2011, Framework 45 to the NE Multispecies FMP (Framework 45) revised the ABCs and ACLs for five stocks for FYs 2011–2012.

The Council adopted Framework 47 on November 16, 2011, and submitted it to NMFS on February 7, 2012, for approval. The Council developed Framework 47 as part of the biennial review process established in the FMP to revise measures necessary to prevent overfishing and rebuild overfished stocks, and achieve the goals and objectives of the NE Multispecies FMP. The Council developed Framework 47 to respond to recent stock assessments and updated stock information, as well as to revise management measures after the fishery has operated for more than 1 year under ACLs and AMs. If approved, Framework 47 will be implemented at the start of FY 2012 on May 1, 2012. One measure, if approved, would apply retroactively to the 2011 scallop fishing year, which ended on February 28, 2012, as described in Item 11 of this preamble.

Proposed Measures

The Council reviewed the proposed regulations, as drafted by NMFS, and deemed them to be consistent with Framework 47 and necessary to implement the proposed measures as specified in section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Some of the measures included in this action are being proposed by NMFS under the authority of section 305(d) of the Magnuson-Stevens Act, which provides that the Secretary of Commerce may promulgate regulations necessary to ensure that fishery management plans or amendments are carried out in accordance with the Magnuson-Steven Act. These measures, which are identified and described in this preamble, are necessary to implement changes to the Atlantic Sea Scallop FMP proposed by the Council in Framework 47, as well as revisions to the regulations that are not included in Framework 47, but that are necessary to achieve the objectives of the FMP. This proposed rule also includes management measures for the common pool fishery for FY 2012 that are not included in Framework 47, but that may be considered by the Regional Administrator (RA) under authority provided by the FMP.

1. Status Determination Criteria for Winter Flounder and Gulf of Maine Cod

Amendment 16 updated the status determination criteria for existing NE multispecies regulated species and ocean pout stocks based on the best available scientific information as determined by the 2008 Groundfish Assessment Review Meeting (GARM III). Framework 45 updated the status determination criteria for pollock to reflect the results of a new pollock stock assessment conducted in 2010. New assessments were conducted for Gulf of Maine (GOM), Georges Bank (GB), and Southern New England/Mid-Atlantic (SNE/MA) winter flounder in June 2011. In addition, a new assessment for GOM cod was conducted in December 2011. Therefore, Framework 47 proposes to update the status determination criteria for the three winter flounder stocks and GOM cod to incorporate the results of the recent stock assessments into the FMP. The proposed revisions are based on the best scientific information available.

The results from GARM III indicated that overfishing was occurring for GB and SNE/MA winter flounder and GOM cod, and SNE/MA winter flounder was overfished. The overfished and overfishing status for GOM winter flounder was unknown. Based on the new assessments, overfishing is no longer occurring for GB or SNE/MA winter flounder. Also, the overfishing status is no longer unknown for GOM winter flounder, and overfishing is not occurring for this stock. Based on the recent GOM cod stock assessment, overfishing is occurring for GOM cod, and the stock is overfished.

The revised biomass target for GB and SNE/MA winter flounder is spawning stock biomass at maximum sustainable yield (SSB_{MSY}), and the maximum fishing mortality rate (F) threshold is F_{MSY}. The revised maximum F threshold for GOM winter flounder is F at 40 percent of the maximum spawning potential ($F_{40\%MSP}$). The biomass target for this stock is still undefined. For GOM cod, the biomass target is unchanged from GARM III and is SSB at 40 percent MSP ($SSB_{40\%MSP}$). The maximum F threshold proxy is also unchanged from GARM III and is $F_{40\%MSP}$. The revised status determination criteria proposed in Framework 47 are presented in Table 1, and the numerical estimates of these criteria are presented in Table 2.

TABLE 1—PROPOSED STATUS DETERMINATION CRITERIA FOR WINTER FLOUNDER STOCKS AND GOM COD

Stock	Biomass target	Minimum biomass threshold	Maximum fishing mortality threshold
GOM winter flounder	Undefined	Undefined	$F_{40\%MSP}$.
GB winter flounder	SSB_{MSY}	½ SSB_{MSY}	F_{MSY}.
SNE/MA winter flounder	SSB_{MSY}	½ SSB_{MSY}	F_{MSY}.
GOM cod	$SSB_{40\%MSP}$	½ $SSB_{40\%MSP}$	$F_{40\%MSP}$.

TABLE 2—NUMERICAL ESTIMATES OF THE PROPOSED STATUS DETERMINATION CRITERIA FOR WINTER FLOUNDER STOCKS AND GOM COD

Stock	Biomass target (mt)	Maximum fishing mortality threshold	MSY (mt)
GOM winter flounder	Undefined	0.31	Undefined.
GB winter flounder	10,100	0.42	3,700.
SNE/MA winter flounder	43,661	0.29	11,728.
GOM cod	61,218	0.20	10,392.

2. Rebuilding Program for GB Yellowtail Flounder

GB yellowtail flounder is jointly managed with Canada under the U.S./Canada Resource Sharing Understanding (Understanding). Framework 45 revised the GB yellowtail flounder rebuilding program, based on the best available scientific information, to rebuild the stock by 2016 with a 50-percent probability of success. This revision extended the rebuilding program to the maximum 10-year rebuilding period allowed by the Magnuson-Stevens Act in order to maximize the amount of GB yellowtail flounder that could be caught while the stock rebuilds.

Under the International Fisheries Agreement Clarification Act (IFACA) enacted into law on January 4, 2011, the Council and NMFS have flexibility in establishing rebuilding programs for stocks that are jointly managed with Canada under the Understanding. For rebuilding stocks managed under the Understanding, the IFACA provides that the Council and NMFS may consider decisions under the Understanding as management measures under an international agreement in order to provide an exception to the Magnuson-Stevens Act's maximum 10-year rebuilding period requirement.

Each year, pursuant to the Understanding, the TMGC meets to consider the scientific advice of the Transboundary Resources Assessment Committee and to make decisions regarding total allowable catch (TAC) recommendations for the upcoming year for each stocks managed under the Understanding. The TMGC adopts harvest strategies to guide its annual TAC recommendations. At its September 2011 meeting, the TMGC reaffirmed its harvest strategy for GB yellowtail flounder to maintain a low to neutral risk of exceeding the fishing mortality limit reference (F_{ref}) of 0.25. Based on that harvest strategy, the TMGC developed its 2012 TAC recommendation for GB yellowtail flounder and forwarded the recommendation to the Council for approval See Item 5 for more information on the 2012 TMGC TAC recommendations..

Given the IFACA, and that the TMGC decisions regarding a GB yellowtail flounder harvest strategy and annual TAC are considered management measures under an international agreement, the rebuilding program for GB yellowtail flounder can exceed 10 years. Therefore, Framework 47 proposes to revise the rebuilding strategy for GB yellowtail flounder. The proposed rebuilding strategy for GB yellowtail flounder would rebuild the stock by 2032 with a 50-percent probability of success. This rebuilding strategy is based on an F of 0.21 and would extend 26 years beyond the rebuilding program start date (2006). The proposed rebuilding time period is as short as possible, taking into account the Understanding and decisions made under it, and the needs of the fishing communities, and will provide more flexibility for negotiating annual catches with Canada.

3. Overfishing Levels and Acceptable Biological Catches

The overfishing level (OFL) for each stock is calculated using the estimated stock size and F_{MSY} (i.e., the fishing mortality rate that, if applied over the long term, would result in maximum sustainable yield). ABCs for each stock are recommended by the Council's Scientific and Statistical Committee (SSC), and are lower than the OFLs in order to account for scientific uncertainty. The ABCs are calculated using the estimated stock size for a particular year and are based on the catch associated with 75 percent of F_{MSY} or the F required to rebuild the stock within the defined rebuilding time period ($F_{rebuild}$), whichever is lower. For SNE/MA winter flounder, the ABC is calculated using the F expected to result from management measures that are designed to achieve an F as close to zero as practicable. The Canadian share/allowance of an ABC, or the expected Canadian catch, is deducted from the ABC available for each pertinent stock. The U.S. ABC is the amount available to the U.S. fishery after accounting for Canadian catch.

Framework 44 specified OFLs and ABCs for each stock for FY 2010–2012 based on the best scientific information available, and Framework 45 revised the OFLs and ABCs for five stocks for FY 2011–2012 based on updated stock information. Framework 47 proposes to set the OFLs and ABCs for nine stocks for FY 2012–2014 that are assessed with an index-based stock assessment or that have had a recent stock assessment completed, as well as set the OFL and ABC for FY 2012–2013 for GB yellowtail flounder based on updated stock information (Table 3). For nine stocks, Framework 47 proposes to adopt the OFLs and ABCs for FY 2012 that were previously specified in Framework 44 or Framework 45 (Table 3). These stocks were last assessed at GARM III. The SSC determined that projections from the GARM III assessment were not a reliable basis for providing catch advice for these stocks for FY 2013–2014. As a result, stock assessment updates were completed in February 2012 for these stocks, and the results of these updates will be used to set OFLs and ABCs for FY 2013–2014. The Council intends to incorporate the assessment update results and specify OFLs and ABCs for FY 2013–2014 for these stocks in a future framework action. A new stock assessment is scheduled for SNE/MA yellowtail flounder in June 2012. The results of this stock assessment will be used to specify OFLs and ABCs for the stock for FY 2013–2014, and will also be incorporated into a future framework action by the Council. Updated information for stocks assessed with an index-based assessment may also be used to revise the OFLs and ABCs for FY 2013–2014 specified in this action. The OFLs and ABCs proposed in Framework 47 are based on the most recent stock assessment information, which is the best scientific information available.

Framework 47, as approved by the Council on November 16, 2011, proposed to set specifications for GOM cod for FY 2012–2014 based on the most recent stock assessment that was completed in December 2011. The results of the assessment indicate that the stock is overfished and overfishing is occurring. The assessment results also indicate that GOM cod cannot rebuild by its rebuilding end date of 2014 even in the absence of all fishing mortality. Given the final results of the GOM cod assessment, and that rebuilding cannot be achieved within the rebuilding period, NMFS concluded that the NE Multispecies FMP is not making adequate progress toward ending overfishing and rebuilding GOM cod. NMFS notified the Council of this determination in a letter dated January 26, 2012, and of the requirement for the Council to implement a plan by May 1, 2013, to immediately end overfishing for GOM cod. The Council was also notified that it has up to 2 years to address GOM cod rebuilding, although NMFS urged the Council to do this by the beginning of FY 2013 to coincide with measures to end overfishing. In addition, NMFS indicated that the Magnuson-Stevens Act provides some flexibility for NMFS to only reduce overfishing, rather than end it immediately, during FY 2012 while the Council develops measures to address GOM cod.

At its January 25, 2012, meeting, the Council's SSC met to discuss the GOM cod stock assessment. At the request of the Council, the SSC did not recommended ABCs for GOM cod for FY 2012–2014. The SSC reviewed the stock assessment and identified issues that may warrant a closer examination and that may influence the interpretation of the assessment results. Subsequently, at its February 1, 2012, meeting, the Council did not adopt ABCs for GOM cod to be implemented in Framework 47. The Council requested that NMFS implement an interim action for FY 2012 to reduce overfishing on GOM cod while the Council responds to the new GOM cod stock assessment and develops measures for FY 2013 that will immediately end overfishing. NMFS has committed that it intends to implement an interim action to reduce overfishing for GOM cod and establish catch levels for this stock for FY 2012.

Therefore, this action does not include OFLs and ABCs for GOM cod for FY 2012–2014. If no action is taken to specify a new ABC for GOM cod for FY 2012, the FY 2012 ABC previously specified in Framework 44 (9,018 mt) would go into effect on May 1, 2012. The SSC will meet in the future to recommend ABCs for FY 2013–2014 for GOM cod, and the Council intends to adopt these ABCs in a future management action.

TABLE 3—PROPOSED FY 2012–2014 OFLS AND ABCS (MT)

Stock	OFL			U.S. ABC		
	2012	2013	2014	2012	2013	2014
GB cod	7,311	.....	.....	5,103	.....	.....
GB haddock	51,150	.....	.....	30,726	.....	.....
GOM haddock	1,296	.....	.....	1,013	.....	.....
GB yellowtail flounder	1,691	1,691	.....	564	564	.....
SNE/MA yellowtail flounder	3,166	.....	.....	1,003	.....	.....
Cape Cod (CC)/GOM yellowtail flounder	1,508	.....	.....	1,159	.....	.....
American plaice	4,727	.....	.....	3,632	.....	.....
Witch flounder	2,141	.....	.....	1,639	.....	.....
GB winter flounder	4,839	4,819	4,626	3,753	3,750	3,598
GOM winter flounder	1,458	1,458	1,458	1,078	1,078	1,078
SNE/MA winter flounder	2,336	2,637	3,471	626	697	912
Redfish	12,036	.....	.....	9,224	.....	.....
White hake	5,306	.....	.....	3,638	.....	.....
Pollock	19,887	20,060	20,554	15,400	15,600	16,000
Northern windowpane flounder	230	230	230	173	173	173
Southern windowpane flounder	515	515	515	386	386	386
Ocean pout	342	342	342	256	256	256
Atlantic halibut	143	143	143	85	85	85
Atlantic wolffish	92	92	92	83	83	83

4. Annual Catch Limits

Unless otherwise noted below, the U.S. ABC for each stock (for each fishing year) is divided into the following fishery components to account for all sources of fishing mortality: State waters (portion of ABC expected to be caught from state waters outside Federal management); other sub-components (expected catch by non-groundfish fisheries); scallop fishery; mid-water trawl fishery; commercial groundfish fishery; and recreational groundfish fishery. Currently, the scallop fishery only receives an allocation for GB and SNE/MA yellowtail flounder, the mid-water trawl fishery only receives an allocation for GB and GOM haddock, and the recreational groundfish fishery only receives an allocation for GOM cod and haddock. Once the ABC is divided, sub-annual catch limits (sub-ACLs) and ACL sub-components are set by reducing the amount of the ABC distributed to each component of the fishery to account for management uncertainty. Management uncertainty is the likelihood that management measures will result in a level of catch greater than expected. For each stock, management uncertainty is estimated using the following criteria: Enforceability, monitoring adequacy, precision of management tools, latent effort, and catch of groundfish in non-groundfish fisheries. Appendix III of the Framework 47 EA provides a detailed description of the process used to estimate management uncertainty and calculate ACLs for this action (see **ADDRESSES**).

The total ACL is the sum of all of the sub-ACLs and ACL sub-components, and is the catch limit for a particular year after accounting for both scientific and management uncertainty. Landings and discards from all fisheries (commercial and recreational groundfish fishery, state waters, and non-groundfish fisheries) are counted against the catch limit for each stock. Components of the fishery that are allocated a sub-ACL for a particular stock are subject to AMs if the catch limit is exceeded. ACL sub-components represent the expected catch by components of the fishery that are not subject to AMs (e.g., state waters).

Based on the ABCs proposed in this action, Framework 47 also proposes ACLs for each of the groundfish stocks, except GOM cod, as described in Item 3 of this preamble. The proposed ACLs for FY 2012–2014 are presented in Table 4 through 7. The percentage of the ABC deducted for expected catch from state waters is between 1 and 10 percent for most stocks. However, for GOM winter flounder, SNE/MA winter flounder, and Atlantic halibut, 25 percent, 28 percent, and 50 percent of the ABC was set aside for state waters catch, respectively. The amount of the ABC deducted for expected catch from non-groundfish fisheries (other sub-components) is between 2 and 9 percent for each stock, but 19 percent and 70 percent of the ABC is set aside for northern and southern windowpane flounder, respectively. Seventy percent of the ABC for southern windowpane flounder is deducted based partly on the expected catch of this stock by the scallop fishery. To adjust for management uncertainty, the default reduction to the ABC component for most stocks and components of the fishery was 5 percent. Only 3 percent was deduced for stocks or components of the fishery with less management uncertainty, and 7 percent was deducted for stocks or components with more management uncertainty.

This proposed action would not change the initial allocation of yellowtail flounder to the scallop fishery for FY 2012 that was specified in Framework 44. The yellowtail flounder allocation to the scallop fishery is based on the expected catch of yellowtail flounder calculated from the projected scallop harvest for the fishing year. Framework 44 allocated 90 percent of the projected yellowtail flounder catch by the scallop fishery for FY 2012 for both SNE/MA yellowtail flounder and GB yellowtail flounder.

The commercial groundfish sub-ACL is further divided into the non-sector (common pool) sub-ACL and the sector sub-ACL, based on the total vessel enrollment in all sectors and the cumulative Potential Sector Contributions associated with those sectors. The proposed distribution of the groundfish sub-ACL between the common pool and sectors presented in Tables 4 through Table 7 are based on preliminary FY 2012 sector rosters submitted to NMFS as of December 1, 2011. This distribution is different from the common pool and sector sub-ACLs included in the Framework 47 EA, which were based on FY 2011 sector rosters, and do not reflect updated rosters submitted to NMFS for FY 2012. However, this distribution is the same as the sector sub-ACLs and Annual Catch Entitlements specified for each sector in the proposed rule to approve sector operations plans for FY 2012 that was published in the **Federal Register** on February 15, 2012 (77 FR 8780).

FY 2012 sector rosters will not be finalized until May 1, 2012, because owners of individual permits signed up to participate in sectors have until April 30, 2012, to drop out of a sector and fish in the common pool for FY 2012. In addition, NMFS extended the deadline to join a sector for FY 2012 through April 30, 2012, in the proposed rule to approve sector operations plan for FY 2012 (77 FR 8780). This opportunity is being provided for common pool vessels due to concerns for the recent GOM cod assessment and the potential impacts for FY 2012 catch limits. Therefore, it is possible that the sector sub-ACLs listed in the tables below may change due to changes in the sector rosters. Updated sector sub-ACLs will be published in the Framework 47 final rule, or a subsequent adjustment rule to reflect the final FY 2012 sector rosters as of May 1, 2012.

TABLE 4—PROPOSED FY 2012 ALLOCATIONS TO THE RECREATIONAL GROUNDFISH FISHERY, SCALLOP FISHERY, AND MID-WATER TRAWL FISHERY (MT)

Fishery	Stock	
Recreational Groundfish Fishery	GOM Cod n/a	GOM Haddock. 259.
Scallop Fishery	SNE/MA Yellowtail Flounder 126	GB Yellowtail Flounder. 307.5.
Midwater Trawl Fishery	GB Haddock 286	GOM Haddock. 9.

TABLE 5—PROPOSED FY 2012 TOTAL ACLS, SUB-ACLS, AND ACL SUB-COMPONENTS (MT, LIVE WEIGHT)

Stock	Total ACL	Groundfish sub-ACL	Preliminary sector sub-ACL	Preliminary common pool sub-ACL	State waters sub-component	Other sub-component
GB cod	4,861	4,605	4,518	87	51	204
GB haddock	29,260	27,438	27,298	141	307	1,229
GOM haddock	958	912	643	10	15	22
GB yellowtail flounder	547.8	217.7	214.6	3.1	0.0	22.6
SNE/MA yellowtail flounder	936	760	591	168	10	40
CC/GOM yellowtail flounder	1,104	1,046	1,019	27	35	23
American plaice	3,459	3,278	3,207	71	36	145
Witch flounder	1,563	1,448	1,420	28	49	66
GB winter flounder	3,575	3,387	3,365	22	0	188
GOM winter flounder	1,040	715	691	24	272	54
SNE/MA winter flounder	603	303	0	303	175	125
Redfish	8,786	8,325	8,258	66	92	369
White hake	3,465	3,283	3,283	45	73	109
Pollock	14,736	12,612	12,513	99	754	1,370
Northern windowpane flounder	163	129	0	129	2	33
Southern windowpane flounder	381	72	0	72	39	270
Ocean pout	240	214	0	214	3	23
Atlantic halibut	83	36	0	36	43	4
Atlantic wolffish	77	73	0	73	1	3

TABLE 6—PROPOSED FY 2013 TOTAL ACLS, SUB-ACLS, AND ACL SUB-COMPONENTS (MT, LIVE WEIGHT)

Stock	Total ACL	Groundfish sub-ACL	Preliminary sector sub-ACL	Preliminary common pool sub-ACL	State waters sub-component	Other sub-component
GB yellowtail flounder	547.8	217.7	214.6	3.1	0.0	22.6
GB winter flounder	3,572	3,384	3,362	22	0	188
GOM winter flounder	1,040	715	691	24	272	54
SNE/MA winter flounder	672	337	0	337	195	139
Pollock	14,927	12,791	12,690	101	756	1,380
Northern windowpane flounder	163	129	0	129	2	33
Southern windowpane flounder	381	72	0	72	39	270
Ocean pout	240	214	0	214	3	23
Atlantic halibut	83	36	0	36	43	4
Atlantic wolffish	77	73	0	73	1	3

TABLE 7—PROPOSED FY 2014 TOTAL ACLS, SUB-ACLS, AND ACL SUB-COMPONENTS (MT, LIVE WEIGHT)

Stock	Total ACL	Groundfish sub-ACL	Preliminary sector sub-ACL	Preliminary common pool sub-ACL	State waters sub-component	Other sub-component
GB winter flounder	3,427	3,247	3,226	21	0	180
GOM winter flounder	1,040	715	691	24	272	54
SNE/MA winter flounder	879	441	0	441	255	182
Pollock	15,308	13,148	13,044	104	760	1,400
Northern windowpane flounder	163	129	0	129	2	33
Southern windowpane flounder	381	72	0	72	39	270
Ocean pout	240	214	0	214	3	23
Atlantic halibut	83	36	0	36	43	4
Atlantic wolffish	77	73	0	73	1	3

5. Annual Specifications for the U.S./Canada Management Area

Eastern GB cod, eastern GB haddock, and GB yellowtail flounder are managed in cooperation with Canada under the U.S./Canada Resource Sharing Understanding, which is an informal agreement between the Northeast Region of NMFS and the Maritimes Region of the Department of Fisheries and Ocean of Canada. The FMP specifies a procedure for setting annual total allowable catches (TACs) for these three stocks in the U.S./Canada Management Area consistent with the Understanding. Each year the TMGC negotiates a shared TAC for each stock based on the most recent stock information and the TMGC harvest strategy. The harvest strategy for setting catch levels is to maintain a low to neutral (less than 50-percent) risk of exceeding the fishing mortality limit reference (F_{ref} = 0.18, 0.26, and 0.25 for cod, haddock, and yellowtail flounder, respectively), and, when stock conditions are poor, fishing mortality should be further reduced to promote rebuilding. The shared TACs are

allocated to the U.S. and Canada based on a formula that considers historical catch percentages and the current resource distribution based on trawl surveys. The U.S./Canada Management Area comprises the entire stock area for GB yellowtail flounder; therefore, the U.S. TAC for this stock is also the U.S. ABC.

In September 2011, the TMGC approved recommendations for 2012 shared TACs for eastern GB cod, eastern GB haddock, and GB yellowtail flounder. The TMGC recommended a shared TAC of 675 mt for eastern GB cod, 16,000 mt for eastern GB haddock, and 900 mt for GB yellowtail flounder. However, at its September 2011 meeting, the Council's SSC recommended an ABC of 1,150 mt for GB yellowtail flounder, which was higher than the TMGC recommendation. On September 28, 2011, the Council reviewed the recommendations of the TMGC and the SSC, and approved the TMGC recommendations for eastern GB cod and eastern GB haddock. The Council also approved an ABC of up to 1,150 mt for GB yellowtail flounder, consistent with the SSC's recommendation. Because this ABC is greater than the shared TAC initially negotiated by the TMGC, the TMGC met by conference call in October 2011 to reconsider its 2012 recommendation for GB yellowtail flounder. The TMGC concluded that 1,150 mt was an appropriate shared TAC for GB yellowtail flounder for 2012 that would balance the risk of exceeding F_{ref} (0.25) and the desire to maintain stock biomass.

The proposed 2012 U.S./Canada TACs are presented in Table 8. For 2012, the annual percentage shares for each country are based on a 10-percent weighting of historical catches and a 90-percent weighting of the current resource distribution. The regulations related to the Understanding require that any overages of the eastern GB cod, eastern GB haddock, or GB yellowtail flounder TACs available to the U.S. be deducted from the pertinent TAC in the following fishing year. If FY 2011 catch information indicates that the U.S. TAC for any of the shared stocks was exceeded, NMFS will reduce the FY 2012 U.S. TAC for that stock, using procedures consistent with the Administrative Procedure Act.

TABLE 8—PROPOSED 2012 U.S./CANADA TACS (MT, LIVE WEIGHT) AND PERCENTAGE SHARES

TAC	Eastern GB cod	Eastern GB haddock	GB yellowtail flounder
Total Shared TAC	675	16,000	1,150
U.S. TAC	162 (24%)	6,880 (43%)	564 (49%)
Canada TAC	513 (76%)	9,120 (57%)	586 (51%)

6. Incidental Catch Total Allowable Catches and Allocations to Special Management Programs

Incidental catch TACs are specified for certain stocks of concern (i.e., stocks that are overfished or subject to overfishing) for common pool vessels fishing in the special management programs (i.e., special access programs (SAPs) and the Regular B Days-At-Sea (DAS) Program), in order to limit the catch of these stocks under such programs. The Incidental Catch TAC for each stock is based on the common pool sub-ACL and is distributed to each special management program using a predetermined formula specified in the regulations. Any catch on a trip that ends on a Category B DAS (either Regular or Reserve B DAS) is attributed to the Incidental Catch TAC for the pertinent stock. Catch on a trip that starts under a Category B DAS and then flips to a Category A DAS is attributed to the common pool sub-ACL.

This proposed rule specifies incidental catch TACs for the NE multispecies special management programs for FYs 2012–2014 based on the proposed common pool sub-ACLs listed in Item 4 of this preamble (Table 11, Table 12, Table 13). The FY 2012 sector rosters will not be finalized until May 1, 2012, for the reasons mentioned earlier in this preamble. Therefore, the common pool sub-ACL may change due to changes to the FY 2012 sector rosters. Updated incidental catch TACs will be published in the Framework 47 final rule, or a subsequent adjustment rule, if necessary, based on the final sector rosters as of May 1, 2012.

TABLE 11—PROPOSED COMMON POOL INCIDENTAL CATCH TACS FOR FY 2012–2014 (MT, LIVE WEIGHT)

Stock	Percentage of common pool sub-ACL	2012	2013	2014
GB cod	2	1.7	n/a	n/a
GB yellowtail flounder	2	0.1	n/a	n/a
SNE/MA yellowtail flounder	1	1.7	n/a	n/a
CC/GOM yellowtail flounder	1	0.3	n/a	n/a
Plaice	5	3.5	n/a	n/a
Witch Flounder	5	1.4	n/a	n/a
GB winter flounder	2	0.4	0.4	0.4
SNE/MA winter flounder	1	3.0	3.4	4.4
White Hake	2	0.9	n/a	n/a

TABLE 12—PERCENTAGE OF INCIDENTAL CATCH TACS DISTRIBUTED TO EACH SPECIAL MANAGEMENT PROGRAM

Stock	Regular B DAS program (percent)	Closed area I hook gear haddock SAP (percent)	Eastern US/CA haddock SAP (percent)
GB cod	50	16	34
GB yellowtail flounder	50	n/a	50
SNE/MA yellowtail flounder	100	n/a	n/a
CC/GOM yellowtail flounder	100	n/a	n/a
Plaice	100	n/a	n/a
Witch Flounder	100	n/a	n/a
GB winter flounder	50	n/a	50
SNE/MA winter flounder	100	n/a	n/a
White Hake	100	n/a	n/a

TABLE 13—INCIDENTAL CATCH TACS FOR EACH SPECIAL MANAGEMENT PROGRAM FOR FY 2012–2014 (MT, LIVE WEIGHT)

Stock	Regular B DAS program			Closed area I hook gear haddock SAP			Eastern U.S./Canada haddock SAP		
	2012	2013	2014	2012	2013	2014	2012	2013	2014
GB cod	0.9	n/a	n/a	0.3	0.0	0.0	0.6	0.0	0.0
GB yellowtail flounder	0.03	n/a	n/a	n/a	n/a	n/a	0.03	n/a	n/a
SNE/MA yellowtail flounder	1.7	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
CC/GOM yellowtail flounder	0.3	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Plaice	3.5	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Witch Flounder	1.4	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
GB winter flounder	0.2	0.2	0.2	n/a	n/a	n/a	0.2	0.2	0.2
SNE/MA winter flounder	3.0	3.4	4.4	n/a	n/a	n/a	n/a	n/a	n/a
White hake	0.9	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

7. Common Pool Trimester Total Allowable Catches

Beginning in FY 2012, the common pool sub-ACL for each stock will be divided into trimester TACs at the start of the fishing year. The percentage of each sub-ACL allocated to each trimester was determined in Amendment 16. The current regulations require that, with the exception of both stocks of windowpane flounder, ocean pout, and Atlantic halibut, once 90 percent of the trimester TAC is projected to be caught, the area where 90 percent of the catch for the pertinent stock occurred will be closed. The area closure will apply to all common pool vessels fishing with gear capable of catching the pertinent stock. The trimester TAC areas for each stock, as well as the applicable gear types are defined at § 648.82(n)(2). Any overages or underages of the trimester TAC in Trimester 1 or Trimester 2 will be applied to the next trimester (e.g., any remaining portion of the Trimester 1 TAC will be added to the Trimester 2 TAC). Any overage of the total sub-ACL will be deducted from the following fishing year's common pool sub-ACL for that stock. Uncaught portions of the Trimester 3 TAC will not be carried over into the following fishing year.

Based on the ACLs and sub-ACLs proposed in Framework 47, this rule also proposes trimester TACs for FYs 2012–2014 for the common pool (Table 14 and Table 15). As described earlier, vessels have until April 30, 2012, to drop out of a sector, and common pool vessels have been provided additional flexibility to join a sector through April 30, 2012. Sector rosters for each fishing year are finalized on May 1. The ACLs and sub-ACLs proposed in this rule are based on current FY 2012 sector rosters as of December 1, 2011. Any changes to the sector rosters will also change the proposed sector and common pool sub-ACLs, and as a result, the trimester TACs proposed in this rule may also change. Based on the final sector rosters, NMFS will publish a rule in early May 2012, if necessary, to modify these sub-ACLs, and notify the public of these changes. As described in Item 9 of this preamble, Framework 47 proposes to revise the accountability measures for the groundfish fishery for the six stocks not currently allocated to sectors. If approved, these proposed measures would remove the common pool trimester TAC requirement for SNE/MA winter flounder, both stocks of windowpane flounder, ocean pout, Atlantic halibut, and Atlantic wolffish. Proposed FY 2012–2014 trimester TACs are presented in Table 15 for each stock based on the current regulations.

TABLE 14—PERCENTAGE OF COMMON POOL SUB-ACL DISTRIBUTED TO EACH TRIMESTER

Stock	Percentage of common pool sub-ACL		
	Trimester 1	Trimester 2	Trimester 3
GB Cod	25	37	38
GOM Cod	27	36	37
GB Haddock	27	33	40
GOM Haddock	27	26	47
GB Yellowtail Flounder	19	30	52

TABLE 14—PERCENTAGE OF COMMON POOL SUB-ACL DISTRIBUTED TO EACH TRIMESTER—Continued

Stock	Percentage of common pool sub-ACL		
	Trimester 1	Trimester 2	Trimester 3
SNE/MA Yellowtail Flounder	21	37	42
CC/GOM Yellowtail Flounder	35	35	30
American Plaice	24	36	40
Witch Flounder	27	31	42
GB Winter Flounder	8	24	69
GOM Winter Flounder	37	38	25
SNE/MA Winter Flounder	36	50	14
Redfish	25	31	44
White Hake	38	31	31
Pollock	28	35	37
N. Windowpane Flounder	33	33	34
S. Windowpane Flounder	33	33	34
Ocean Pout	33	33	34
Atlantic Halibut	33	33	34
Atlantic Wolffish	75	13	12

TABLE 15—PROPOSED FY 2012–2014 COMMON POOL TRIMESTER TACS

Stock	2012			2013			2014		
	Tri 1	Tri 2	Tri 3	Tri 1	Tri 2	Tri 3	Tri 1	Tri 2	Tri 3
GB Cod	21.8	32.2	33.1	n/a	n/a	n/a	n/a	n/a	n/a
GOM Cod	0.0	0.0	0.0	n/a	n/a	n/a	n/a	n/a	n/a
GB Haddock	38.0	46.4	56.2	n/a	n/a	n/a	n/a	n/a	n/a
GOM Haddock	2.6	2.5	4.6	n/a	n/a	n/a	n/a	n/a	n/a
GB Yellowtail Flounder	0.6	0.9	1.6	n/a	n/a	n/a	n/a	n/a	n/a
SNE/MA Yellowtail Flounder	32.0	50.5	87.6	n/a	n/a	n/a	n/a	n/a	n/a
CC/GOM Yellowtail Flounder	9.5	9.5	8.1	n/a	n/a	n/a	n/a	n/a	n/a
American Plaice	17.0	25.5	28.3	n/a	n/a	n/a	n/a	n/a	n/a
Witch Flounder	7.6	8.8	11.9	n/a	n/a	n/a	n/a	n/a	n/a
GB Winter Flounder	1.8	5.3	15.2	1.8	5.3	15.2	1.7	5.1	14.5
GOM Winter Flounder	8.8	9.0	5.9	8.8	9.0	5.9	8.8	9.0	5.9
SNE/MA Winter Flounder	109.0	151.4	42.4	121.3	168.5	47.2	158.8	220.5	61.7
Redfish	16.6	20.6	29.2	n/a	n/a	n/a	n/a	n/a	n/a
White Hake	17.2	14.0	14.0	n/a	n/a	n/a	n/a	n/a	n/a
Pollock	27.8	34.8	36.8	28.2	35.3	37.3	29.0	36.3	38.3
N. Windowpane Flounder	42.5	42.5	43.8	42.5	42.5	43.8	42.5	42.5	43.8
S. Windowpane Flounder	23.7	23.7	24.4	23.7	23.7	24.4	23.7	23.7	24.4
Ocean Pout	70.7	70.7	72.9	70.7	70.7	72.9	70.7	70.7	72.9
Atlantic Halibut	12.0	12.0	12.4	12.0	12.0	12.4	12.0	12.0	12.4
Atlantic Wolffish	55.0	9.5	8.8	55.0	9.5	8.8	55.0	9.5	8.8

* Tri 1 = Trimester 1; Tri 2 = Trimester 2; Tri 3 = Trimester 3.

8. Common Pool Restricted Gear Areas

Amendment 16 implemented two restricted gear areas (RGAs) for common pool vessels beginning in FY 2010: The Western GB Multispecies RGA and the SNE Multispecies RGA. These RGAs were developed to help meet the mortality objectives for the common pool fishery and primarily reduce the catch of flatfish species by common pool vessels. The current regulations require common pool vessels fishing under a NE multispecies DAS that fish any part of a trip in these RGAs to use a haddock separator trawl, a Ruhle trawl, a rope trawl, longline/tub trawls, handgear, or sink gillnets. Tie-down gillnets are also allowed to be used in these areas, or stowed on board, as long as the mesh is greater than or equal to 10 inches (25.4 cm). Common pool vessels fishing in either of these RGAs are required to declare into the area via the Vessel Monitoring System, or obtain a letter of authorization from the RA to fish in these RGAs.

Framework 47 proposes to remove the Western GB and SNE Multispecies RGAs based on a determination that there are sufficient fishing mortality controls for common pool vessels to limit catch within the pertinent catch limits. In addition, Framework 47 also proposes to modify AMs for several groundfish stocks, which, if approved, would include restricted gear areas for common pool and sector vessels if total catch limits are exceeded during the fishing year. Removing the Western GB and SNE Multispecies RGAs would simplify the regulations and avoid confusion between the proposed AM areas and the existing common pool RGAs. In addition, removing the Western GB and SNE Multispecies RGAs would facilitate fishing by common pool vessels without risk of exceeding common pool catch limits.

9. Accountability Measures

AMs are required to prevent overfishing and ensure accountability in the fishery. Proactive AMs are intended to prevent ACLs from being exceeded and reactive AMs are meant to correct or mitigate overages if they occur. Amendment 16 implemented AMs for all of the groundfish stocks. For the six stocks not currently allocated to sectors (SNE/MA winter flounder, northern and southern windowpane flounder, ocean pout, Atlantic wolffish, and Atlantic halibut), the current AM is triggered if

catch by sector and common pool vessels exceeds the common pool catch limit. For FYs 2010 and 2011, if the common pool sub-ACL is exceeded, a differential DAS rate based on the proportion of the common pool sub-ACL caught is applied in the differential DAS area for the pertinent stock. The differential DAS rate only applies to common pool vessels fishing under a NE multispecies DAS. Beginning in FY 2012, the common pool sub-ACL will be divided into trimester TACs. For Atlantic wolffish and SNE/MA winter flounder, if the common pool catch exceeds 90 percent of the trimester TAC, the area that accounts for 90 percent of the catch would be closed to common pool vessels fishing with certain gear types for the remainder of the trimester. Any overages of the common pool sub-ACL will be deducted from the sub-ACL for the pertinent stock in the following fishing year.

Upon approval of Amendment 16, NMFS notified the Council that it was concerned with the AMs developed for stocks not allocated to sectors because they lacked sector-specific AMs. NMFS recommended that the Council develop appropriate AMs for these stocks in a future action. As a result, Framework 47 proposes to modify the AMs for these stocks for common pool and sector vessels. During the development of Framework 47, there was ongoing litigation on Amendment 16. Environmental groups challenged Amendment 16 partially due to the lack of sector-specific AMs for stocks not allocated to sectors. On December 20, 2011, the U.S. District Court for the District of Columbia upheld all challenged measures in Amendment 16, except for the AMs for those stocks not allocated to sectors (SNE/MA winter flounder, northern windowpane flounder, southern windowpane flounder, ocean pout, Atlantic halibut, and Atlantic wolffish). In its only adverse finding, the Court found that Amendment 16 lacked adequate reactive AMs (i.e., AMs that are implemented if an ACL is exceeded) for these stocks and remanded the issue to NMFS and the Council for further action. NMFS is requesting public comment on the adequacy of the proposed AMs in this action in light of the recent litigation.

Ocean Pout and Windowpane Flounder, and Atlantic Halibut

Framework 47 proposes area-based AMs for ocean pout and both stocks of windowpane flounder, and a zero-possession AM for Atlantic halibut for sector and common pool vessels that would be triggered if the total ACL is exceeded. During year 2, NMFS would evaluate catch for year 1, and, if the total ACL is exceeded, the AM would be implemented in year 3. For example, if the total ACL for ocean pout is exceeded in FY 2012, NMFS would implement the applicable AM for ocean pout in FY 2014. To determine if the total ACL is exceeded, NMFS would include catch by the groundfish fishery as well as catch by sub-components of the fishery (e.g., state waters and non-groundfish fisheries). The implementation of AMs in year 3 would allow a complete and accurate evaluation of catch for year 1. Catch of these stocks occurs in state waters and non-groundfish fisheries, and in-season catch data is not available for these fisheries. Due to the current data availability, the proposed timing of these AMs would allow for accurate catch accounting, and will ensure an AM is not inadvertently implemented. Improved data availability in the future may allow for modification of the timing of these AMs.

Currently, ocean pout, northern and southern windowpane flounder, and Atlantic halibut are not allocated to sectors, and a sub-ACL is only specified for the common pool fishery. Catch by common pool and sector vessels is applied to the common pool sub-ACL for these stocks. However, if a sub-ACL is specified in the future for other fisheries, and AMs are developed for these fisheries, the AMs for the groundfish fishery or any other fisheries would only be triggered if the total ACL for the stock is exceeded and the fishery's sub-ACL was also exceeded, including its share of any overage caused by other sub-components of the fishery. Since these proposed AMs are meant to restrict catch by common pool and sector vessels, sectors would not be able to request an exemption from these AM provisions.

If the total ACL is exceeded for ocean pout, northern windowpane flounder, or southern windowpane flounder in year 1, gear restrictions would apply in the AM areas developed for each stock for both sector and common pool vessels in year 3. For all three stocks, trawl vessels would be required to use selective trawl gear. Approved gears include the haddock separator trawl, the Ruhle trawl (see Item 14 for description of Ruhle trawl that includes the mid-sized eliminator (or Ruhle) trawl in the definition of this gear type), the rope trawl, and any other gears authorized by the Council in a management action or approved for use consistent with the process defined at § 648.85(b)(6). There would be no restrictions on longline or gillnet gear because it was determined that these gear types comprise a small amount of the total catch for these stocks. If the amount of the total ACL overage is between the management uncertainty buffer and up to 20 percent, the small AM area would be triggered for the pertinent stock. Currently, the management uncertainty buffer is 5 percent; however, this buffer could be modified in the future. If the amount of the overage is more than 20 percent, the large AM area would be triggered. The applicable GB AM area would be implemented if the total ACL for northern windowpane is exceeded, and the applicable SNE AM area would be implemented if the total ACL for southern windowpane is exceeded. Both the GB and SNE AM areas would be implemented if the total ACL for ocean pout is exceeded. Sectors would be prohibited from requesting an exemption from these AM provisions.

Currently, common pool and sector vessels have a one-fish landing limit for Atlantic halibut. If the total ACL for Atlantic halibut is exceeded in year 1, landing of Atlantic halibut would be prohibited by common pool and sector vessels in year 3. This AM is expected to keep mortality of Atlantic halibut below the target levels because a portion of the discarded fish would be expected to survive.

SNE/MA Winter Flounder and Atlantic Wolffish

Currently, commercial and recreational vessels are prohibited from possessing SNE/MA winter flounder and Atlantic wolffish. Framework 47 proposes to adopt the current possession prohibition as a proactive AM for SNE/MA winter flounder and Atlantic wolffish for both commercial and recreational vessels. Under these proposed measures, the current trimester TAC AM for SNE/MA winter flounder and Atlantic wolffish that applies to common pool vessels would be removed. Based on FY 2010 catch information and partial FY 2011 catch information, the prohibition on possession has adequately kept the catch of this stock within the mortality targets.

10. Removal of Cap on Yellowtail Flounder Catch in Scallop Access Areas

In 2004, Framework 39 to the NE Multispecies FMP and Framework 16 to the Atlantic Sea Scallop FMP implemented a cap on the amount of yellowtail flounder that could be caught in the Nantucket Lightship, Closed Area I, and Closed Area II Sea Scallop Access Areas. This measure was implemented before ACL and AM provisions were added to the NE Multispecies and Atlantic Sea Scallop FMPs in order to ensure that yellowtail flounder catches

did not exceed the target TACs for yellowtail flounder or exceed the U.S TAC for GB yellowtail flounder. Under the current regulations, scallop vessels are allowed to catch up to 10 percent of the total SNE/MA yellowtail flounder ACL from the Nantucket Lightship Sea Scallop Access Area, and up to 10 percent combined of the U.S. TAC of GB yellowtail flounder from the Closed Area I and Closed Area II Sea Scallop Access Areas. Once the 10-percent access area cap is caught, the pertinent access area is closed to scallop vessels for the remainder of the scallop fishing year.

Framework 47 proposes to remove the 10-percent access area cap for the Nantucket Lightship, Closed Area I, and Closed Area II Sea Scallop Access Areas. The scallop fishery would still be subject to its GB and SNE/MA yellowtail flounder sub-ACLs, but there would be no limit on how much of the sub-ACLs could be caught in the scallop access areas. This proposed measure would remove an unnecessary provision now that the fishery is managed under ACLs. ACLs limit the amount of yellowtail flounder that can be caught by the scallop fishery, so a catch cap for the access areas is no longer necessary to meet fishing mortality objectives.

11. Implementation of Scallop Fishery Accountability Measure

Each year a portion of the GB and SNE/MA yellowtail flounder ABC is allocated to the scallop fishery as a sub-ACL. Currently, if the scallop fishery exceeds its sub-ACL for either of these stocks by 1 percent or more in the scallop fishing year, pre-identified statistical areas with high catch rates of yellowtail flounder will close to limited access scallop vessels. The closure would be in place for consecutive months beginning at the start of the subsequent scallop fishing year, and the duration of the closure would depend on the magnitude of the overage. The proposed rule for Framework 23 to the Atlantic Sea Scallop FMP (Framework 23) was published in the **Federal Register** on January 3, 2012 (77 FR 52). Framework 23 proposes to revise the yellowtail flounder seasonal closure AM schedule for scallop vessels to ensure that the closures would occur during the months with the highest yellowtail flounder catch rates. If approved, Framework 23 would likely become effective in April 2012.

Framework 47 proposes to modify when the AM for the scallop fishery would be triggered. If the scallop fishery exceeds it sub-ACL for any groundfish stock, and the total ACL for that stock is also exceeded, the corresponding scallop seasonal closure would be implemented according to the seasonal closure AM schedule. In addition, if the scallop fishery exceeds its sub-ACL by 50 percent or more for any groundfish stock, the scallop seasonal closure AM would be implemented according to the schedule. When evaluating whether the total ACL has been exceeded for a groundfish stock for the purposes of triggering the scallop fishery AM, NMFS would add the maximum carryover available to the groundfish fishery to the estimate of total catch. Currently, the scallop fishery is allocated a sub-ACL for GB and SNE/MA yellowtail flounder; however, this measure would also apply to the scallop fishery AM for any additional groundfish stock that is allocated to the scallop fishery in a future action. If approved, this measure would apply retroactively to the 2011 scallop fishing year.

The scallop fishing year ends on February 28, and the groundfish fishing year ends on April 30. Given the differences in fishing years, complete catch information for GB and SNE/MA yellowtail flounder would not be available until sometime after April 30. In addition, inseason catch information is not available for groundfish ACL sub-components, such as state waters catch. As a result, when evaluating the total catch of GB and SNE/MA yellowtail flounder for the purposes of triggering the scallop fishery AM, NMFS would primarily rely on partial catch information to project total fishing year catch of these two stocks from state waters and non-groundfish fisheries. NMFS would also use partial fishing year data to estimate GB and SNE/MA yellowtail flounder catch by the groundfish fishery and would project catch of these two stocks by groundfish vessels for the remainder of the groundfish fishing year. Although this proposed measure would allow more flexibility for the scallop fishery, there would be uncertainty associated with the catch projections used to determine whether the scallop fishery AM should be triggered. NMFS is seeking public comment on the use of these catch estimates for the purposes of triggering the scallop fishery AM.

This proposed measure would allow more flexibility in the fishery. Currently, the yellowtail flounder allocation to the scallop fishery is based on an estimate of the yellowtail flounder expected to be caught with the projected scallop harvest for the fishing year. Because there is uncertainty in estimating the projected yellowtail flounder catch in the scallop fishery, the proposed revision to the AM trigger would account for projection uncertainty without compromising the mortality objectives for GB and SNE/MA yellowtail flounder. In addition, triggering the AM when the scallop fishery exceeds its allocation by 50 percent or more will still ensure accountability in the fishery. The Council did not specifically include how to reference this measure in the scallop regulations in Framework 47; therefore, these references are proposed by NMFS under the authority of Section 305(d) of the Magnuson-Stevens Act.

12. Inseason Re-Estimation of Scallop Fishery GB Yellowtail Flounder Sub-ACL

The allocation of the GB yellowtail flounder sub-ACL to the scallop fishery is based on an estimate of the amount of GB yellowtail flounder the scallop fishery is expected to catch, which is determined by the scallop quota for the fishing year. The estimate is based on past fishing activity and projected changes in the stock size of GB yellowtail flounder and scallops. There are no restrictions on how much GB yellowtail flounder can be allocated to the scallop fishery. In FY 2010, the scallop fishery was allocated 100 percent of the estimated GB yellowtail flounder catch associated with the projected scallop catch. In FY 2011 and FY 2012, the scallop fishery was allocated 90 percent of the projected GB yellowtail flounder catch. Because there is uncertainty in the initial estimates of projected GB yellowtail flounder catch, there is a possibility that the initial allocation to the scallop fishery could be too low, which could cause the scallop sub-ACL to be exceeded, or that the initial allocation to the scallop fishery could be too high, which could reduce GB yellowtail flounder yield.

Due to the uncertainty in the initial estimates of projected GB yellowtail flounder and scallop catch, and to prevent the loss of available yield of GB yellowtail flounder, Framework 47 proposes to create a mechanism to re-estimate the expected GB yellowtail flounder catch by the scallop fishery by January 15 of each fishing year. If the re-estimate of projected GB yellowtail flounder indicates that the scallop fishery will catch less than 90 percent of its sub-ACL, NMFS would reduce the scallop fishery sub-ACL to the amount expected to be caught and increase the groundfish fishery sub-ACL for GB yellowtail flounder by the difference between the original estimate and the revised estimate. The increase to the groundfish fishery sub-ACL would be distributed to sectors and the common pool. NMFS would not make any changes to the GB yellowtail flounder

sub-ACL for the scallop fishery if the revised estimate indicates that the scallop fishery will catch 90 percent or more of its sub-ACL. NMFS would notify the public of any changes to the GB yellowtail flounder sub-ACLs consistent with the Administrative Procedure Act.

In addition, due to uncertainty associated with the revised estimate of expected GB yellowtail flounder catch, NMFS would have the authority to adjust the size of the change made to the sub-ACLs for the scallop and groundfish fisheries. Based on the amount of the uncertainty, NMFS could revise the sub-ACLs by any amount between the initial estimate of expected GB yellowtail flounder catch by the scallop fishery and the revised estimate. Implementation of this measure would be delayed until data availability for projecting GB yellowtail flounder catch is sufficient to re-estimate the GB yellowtail flounder sub-ACL for the scallop fishery mid-season. Consideration of uncertainty and delay in implementation of this measure would avoid errors in the re-estimation of the GB yellowtail flounder sub-ACLs if the projected scallop fishery catch is underestimated. Errors in the re-estimation of the scallop fishery sub-ACL could cause the scallop fishery to exceed its sub-ACL if projected catch is underestimated. In addition, if the groundfish fishery catches the additional GB yellowtail flounder allocated mid-fishing year, the U.S. TAC for GB yellowtail flounder could be exceeded.

This proposed measure will prevent any loss of GB yellowtail flounder yield that may occur if the initial catch estimate of this stock by the scallop fishery is too high. Re-estimation of the expected GB yellowtail flounder catch by the scallop fishery mid-season would allow additional GB yellowtail flounder yield by the commercial groundfish fishery and would help achieve optimum yield for this stock.

13. Annual Measures for FY 2012 Under Regional Administrator Authority

The FMP provides authority for the RA to implement certain types of management measures for the common pool fishery, the U.S./Canada Management Area, and Special Management Programs on an annual basis, or as needed. This proposed rule includes a description of the management measures being considered by the RA for FY 2012 in order to provide an opportunity for the public to comment on whether the proposed measures are appropriate. These measures are not part of Framework 47, and were not specifically proposed by the Council, but are proposed in conjunction with Framework 47 for expediency purposes and because they relate to the proposed Framework 47 measures (i.e., ACLs). The RA may implement different measures from the FY 2012 measures proposed in this action if current information indicates such measures are necessary to meet the requirements of the FMP. The measures implemented through RA authority for FY 2012 will be implemented through the Framework 47 final rule, or, if necessary, through a separate final rule.

The RA has the authority to modify common pool trip limits in order to prevent exceeding the common pool sub-ACLs and facilitate harvest so total catch approaches the common pool sub-ACLs. Table 16 provides a summary of the default trip limits that would take effect in FY 2012 if the RA takes no action, the common pool trip limits for FY 2011, and the proposed trip limits that would be in effect for the start of FY 2012. Proposed trip limits for FY 2012 were developed after considering changes to the FY 2012 common pool sub-ACLs and sector rosters, trimester TACs for FY 2012, catch rates of each stock during FY 2011, bycatch, the potential for differential DAS counting in FY 2012, and other available information. For stocks that include a range of potential trip limits in Table 16, a final trip limit would be specified in the final rule implementing these measures based upon public comment. NMFS is requesting public input on common pool trip limits for FY 2012.

TABLE 16—DEFAULT, FY 2011, AND PROPOSED FY 2012 TRIP LIMITS FOR THE COMMON POOL

Stock	Default limit in regulations	FY 2011 trip limit	Proposed FY 2012 trip limit
GOM cod	800 lb (362.9 kg) per DAS, up to 4,000 lb (1,818.2 kg) per trip.	500 lb (226.8 kg) per DAS, up to 2,000 lb (907.2 kg) per trip; reduced to 350 lb (158.8 kg) per DAS up to 1,000 lb (453.6 kg) per trip.	500 lb (226.8 kg)—800 lb (362.9 kg) per DAS, up to 2,000 lb (907.2 kg) per trip.
GB cod	2,000 lb (907.2 kg) per DAS, up to 20,000 lb (9,072 kg) per trip.	3,000 lb (1,360.8 kg) per DAS, up to 30,000 lb (13,607.8 kg) per trip; reduced to 300 lb (136.1 kg) per DAS, up to 600 lb (272.2 kg) per trip.	2,000 lb (907.2 kg) per DAS, up to 20,000 lb (9,072 kg) per trip.
GOM haddock	Unrestricted	1,000 lb (453.6 kg) per trip	750 lb (340.2 kg)—1,000 lb (453.6 kg) per trip.
GB haddock	Unrestricted	10,000 lb (4,535.9 kg) per trip	7,500 lb (3,402 kg)—10,000 lb (4,535.9 kg) per trip.
GOM winter flounder	Unrestricted	250 lb (113.4 kg) per trip	250 lb (113.4 kg) per trip.
GB winter flounder	Unrestricted	1,000 lb (453.6 kg) per trip	1,000 lb (453.6 kg) per trip.
CC/GOM yellowtail flounder	250 lb (113.4 kg) per DAS, up to 1,500 (680.4 kg) per trip.	500 lb (226.8 kg) per DAS, up to 2,000 (907.2 kg) per trip.	250 lb (113.4 kg) per DAS, up to 1,500 (680.4 kg) per trip.
GB yellowtail flounder	Unrestricted	1,500 (680.4 kg) per trip	1,000 (453.6 kg)—1,500 (680.4 kg) per trip.
SNE/MA yellowtail flounder	250 lb (113.4 kg) per DAS, up to 1,500 (680.4 kg) per trip.	500 lb (226.8 kg), up to 2,000 (907.2 kg) per trip.	500 lb (226.8 kg), up to 2,000 (907.2 kg) per trip—1,500 lb (680.4 kg), up to 4,500 (2,041.1 kg) per trip.
American plaice	Unrestricted	Unrestricted	Unrestricted.
Pollock	1,000 lb (450 kg) per DAS; up to 10,000 lb (4,500 kg) per trip.	Unrestricted	Unrestricted.
Witch flounder	Unrestricted	250 lb (113.4 kg) per trip	250 lb (113.4 kg) per trip.
White hake	500 lb (226.8 kg) per DAS; up to 2,000 lb (907.2 kg) per trip.	1,500 lb (680.4 kg) per trip	1,000 lb (453.6 kg)—1,500 lb (680.4 kg) per trip.

TABLE 16—DEFAULT, FY 2011, AND PROPOSED FY 2012 TRIP LIMITS FOR THE COMMON POOL—Continued

Stock	Default limit in regulations	FY 2011 trip limit	Proposed FY 2012 trip limit
Redfish	Unrestricted	Unrestricted	Unrestricted.

The RA has the authority to determine the allocation of the total number of trips into the Closed Area II Yellowtail Flounder/Haddock SAP based on several criteria, including the GB yellowtail flounder TAC and the amount of GB yellowtail flounder caught outside of the SAP. In 2005, Framework 40B (June 1, 2005; 70 FR 31323) implemented a provision that no trips should be allocated to the Closed Area II Yellowtail Flounder/Haddock SAP if the available GB yellowtail flounder catch is insufficient to support at least 150 trips with a 15,000-lb (6,804-kg) trip limit (i.e., 150 trips of 15,000 lb (6,804 kg)/trip, or 2,250,000 lb (1,020,600 kg). This calculation accounts for the projected catch from the area outside the SAP. Based on the groundfish sub-ACL of 479,946 lb (217,700 kg), there is insufficient GB yellowtail flounder to allocate any trips to the SAP, even if the projected catch from outside the SAP area is zero. Therefore, based on existing authority, this action proposes to allocate zero trips to the Closed Area II Yellowtail Flounder/Haddock SAP for FY 2012. Vessels could still fish in this SAP in FY 2012 using a haddock separator trawl, a Ruhle trawl, or hook gear. Vessels would not be allowed to fish in this SAP using flounder nets.

14. Mid-Size Ruhle Trawl

The Council requested that NMFS implement a smaller-scale version of the Ruhle trawl (i.e., the mid-size Eliminator Trawl), which is a trawl designed with large meshes in the forward part of the net to reduce catch of cod and flatfish. Specifically, the Council requested that the mid-size Eliminator Trawl should be: (1) Available for use by both sector and non-sector vessels in the Eastern U.S./Canada Haddock SAP and Regular B DAS Program; and (2) assigned a separate gear code but should not be assigned a separate stratum for the purpose of discard information. This action proposes to broaden the current definition of the Ruhle Trawl to include the mid-size Eliminator trawl. Expanding this definition would increase fishing opportunity for smaller vessels by allowing them to utilize this smaller-scale trawl, and therefore, have access to the Haddock SAP, as well as the B DAS program. In addition, vessels would be able to operate under the Ruhle trawl gear code, which would result in reduced discard rates for certain species, particularly depleted stocks that may have constraining catch limits.

Vessels fishing in the Regular B DAS Program or the Haddock SAP must use approved trawl gear that has been determined to reduce the catch of NE multispecies stocks of concern. The RA may approve additional gears for use in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP if a gear meets gear performance standards defined at § 648.85(b)(6)(iv)(J)(*2*). These gear performance standards were developed to allow the harvest of healthy stocks (e.g., GB haddock) while avoiding the capture of stocks of concern (e.g., GB cod and GB yellowtail flounder). The full-size Eliminator trawl (i.e., Ruhle trawl) was tested in 2006. This experiment demonstrated that it effectively harvested the target species haddock while reducing catches of cod and other stocks of concern. NMFS, upon the request of the Council, approved the Ruhle trawl for use in the B DAS Program and Haddock SAP on July 14, 2008 (73 FR 40186). The current definition of the Ruhle trawl is specific to the experimental net, which was designed for relatively large vessels.

The University of Rhode Island (URI) conducted a follow-on study that tested two smaller versions of the Ruhle trawl that could be used by smaller vessels (small-size Eliminator trawl and mid-size Eliminator trawl) to determine if the catch performance of the smaller trawls is similar to that of the full-size trawl. In January 2010, URI submitted a final report titled ''Exploring Bycatch Reduction in the Haddock Fishery Through the Use of the Eliminator Trawl (Ruhle Trawl) with Fishing Vessels in the 250 to 550 HP Range.'' Although the small-size Eliminator did not attain the desired catch performance results, the mid-size Eliminator had catch performance characteristics very similar to those of the Ruhle trawl. Following a successful peer review, the Council determined that the mid-size Eliminator trawl effectively meets the pertinent gear performance standards and requested that NMFS approve the use of the mid-size Eliminator trawl for use by sector and non-sector vessels in the B DAS Program and Haddock SAP.

Vessels participating in the NE multispecies common pool and sector management programs are subject to catch limits, which include discarded catch. Vessel Trip Report (VTR) gear codes, in conjunction with stock area fished and sector, are used to establish discard strata for each NE multispecies stock to ensure these catch limits are not exceeded. Each discard stratum has a particular discard rate associated with each NE multispecies stock based on Northeast Fisheries Observer Program (NEFOP) and at-sea-monitor (ASM) data. There are currently three commonly used VTR trawl gear codes for groundfish: Bottom fish; haddock separator; and Ruhle trawl. Because the haddock separator trawl and the Ruhle trawl were designed to fish more selectively than a regular bottom fish trawl, trips using these two gear types generally have reduced catch for certain stocks of NE multispecies, particularly flatfish and cod, resulting in a lower discard rate for these species. Due to the similar catch performance characteristics of the mid-size Eliminator and Ruhle trawl, the Council has requested that data from both be pooled for the purpose of assigning discard rates and establishing discard strata.

The Council also requested that NMFS create a new VTR gear code for the mid-size Eliminator Trawl as a means to monitor the catch performance of this net design in the fishery. However, creating a new gear code would not achieve the Council's objective. A mid-size Eliminator trawl could range in size from the experimental net up to the size of the Ruhle trawl. Consequently, a vessel may correctly choose the mid-size Eliminator Trawl VTR gear code, but the net size could vary considerably from the experimental net size, which precludes the ability to use a VTR gear code to monitor how the experimental net performs when adopted in the fishery. Instead, NMFS proposes to use foot-rope length and discard data obtained by trips that are accompanied by a NEFOP assigned observer or ASM. Data from observed or monitored vessels that are using a mid-size Eliminator with a sweep that is comparable to the experimental net sweep of 33m (109 ft) would be used to evaluate how the

experimental gear is performing in practice.

NMFS proposes to broaden the definition of the Ruhle Trawl such that, if implemented as proposed, the mid-size Eliminator would meet the definition of a Ruhle trawl. Upon consultation with NMFS fishing gear scientists and the URI Eliminator trawl research team, this action proposes to adjust the current definition of the Ruhle trawl to include the smaller dimensions of the mid-size Eliminator trawl, and only include the primary design features of the net design in the gear definition. Currently, a Ruhle trawl must have a minimum fishing circle of at least 398 ft (121.4 m), meet mesh-size specifications in the forward portion of the net, be rigged with a specific sweep configuration, have four seams, and have a minimum kite surface area. This action would revise the current Ruhle trawl definition by making the following modifications: Replace the minimum fishing circle requirement with a more concise and enforceable measure using minimum number of meshes at the wide end of the first bottom belly; adjust the mesh configuration in the forward part of the net and the minimum kite area requirements to that of the mid-size Eliminator; and remove the sweep configuration requirements. The sweep requirements have been removed from the definition as this component of the gear is largely based on bottom composition and preference, and is not the primary bycatch reduction device, which is the large meshes located in the forward part of the net. The minimum mesh sizes and minimum kite area were reduced to enable the mid-size Eliminator to meet the Ruhle trawl definition.

15. Monitoring of Fillets, Fish Parts, and Fish Landed for At-Home Consumption

This action proposes to remove the 3:1 counting method for the purposes of counting fillets and fish-parts landed for at-home consumption against the pertinent ACLs. NMFS published an interim final rule on July 19, 2011, (76 FR 42577), which changed the way that fillets, fish parts, and fish landed for at-home consumption are counted against ACLs. That rule specified that all catch by a sector vessel, including fillets retained by crew for home consumption, count against the sector's ACE for that stock; and all catch by a common pool vessel, including fillets retained by crew for home consumption, count towards the vessel's possession limit for that stock and the common pool sub-ACL for that stock. The interim final rule required that fillets and parts of fish (as referenced at § 648.83(b)) be counted at a rate of 3:1 both for compliance purposes with common pool possession limits and for monitoring ACLs. The regulations were modified to require the weight of fillets or parts of fish to be multiplied by 3 and added to the weight of whole fish for monitoring purposes to ensure all fish landed for at-home consumption is attributed to the appropriate ACL.

Since publishing the interim final rule, NMFS has developed a more precise method to estimate the weight of fillets or parts of fish for monitoring ACLs. Instead of a universal 3:1 multiplier, the new method uses species-specific conversion factors. The species-specific conversion factors used for regulated species currently allowed to be landed are presented in Table 17. These conversion factors, as well as the conversion factors for other groundfish species and species outside of the NE Multispecies FMP, are available from NMFS (see **ADDRESSES**). Fillets and fish parts landed would be multiplied by the species-specific multiplier for monitoring sector ACEs and common pool sub-ACLs. This is consistent with the FMP requirement that all catch by sector and common pool vessels be accounted for, and will provide more accurate information to be used in preventing overharvest of sector ACEs and common pool sub-ACLs. The 3:1 counting rate for fillets and parts of fish would continue to be used to determine compliance with possession limits for the common pool.

TABLE 17—GROUNDFISH SPECIES CONVERSION FACTORS FOR FILLETS AND PARTS OF FISH LANDED FOR AT-HOME CONSUMPTION

Species	Conversion factor
Atlantic cod	1.169
Haddock	1.139
Yellowtail Flounder	1
American Plaice	1
Witch Flounder	1
Winter Flounder	1
Redfish	1
White Hake	1.34
Pollock	1.133
Atlantic Halibut	1.142

16. Charter/Party Vessel Closed Area Letter of Authorization

Framework Adjustment 33 to the NE Multispecies FMP (Framework 33) provided an exemption to charter/party and recreational vessels to fish in the GOM Rolling Closure Areas, the Western GOM Closure Area, Cashes Ledge Closure Area, and the Nantucket Lightship Closed Area, provided the vessel is issued a letter of authorization (LOA) from the Regional Administrator. The current regulations specify that a vessel issued this LOA is not allowed to sell any fish, with the exception of tuna. However, the Council's intent for this exemption cited in Framework 33 was to exempt all species that are not managed by the New England Fishery Management Council (NEFMC) or the Mid-Atlantic Fishery Management Council (MAFMC). In addition to tuna, striped bass and lobster, among other species, are not managed by the NEFMC or the MAFMC, and therefore, should be precluded from the prohibition of sale. To address this issue, the regulations at § 648.81(c)(2)(ii)(B) and (f)(2)(iii)(B), and at § 648.89(e)(3)(ii), would be revised to allow the sale of fish species that are not managed by the Councils, including striped bass and lobster, when a vessel holds a charter/party LOA issued by the Regional Administrator.

Request for Comments

The public is invited to comment on any of the measures proposed in this rule. NMFS is especially interested in receiving comments on the following proposed measures for which the agency has concern: (1) The proposed revisions to the AMs for the six stocks not currently allocated to sectors (SNE/MA winter flounder, northern windowpane flounder, southern windowpane flounder, ocean pout, Atlantic halibut, and Atlantic wolffish); (2) the use of catch projections for evaluating the total yellowtail flounder catch in order to trigger the scallop fishery AM; and (3) the proposed common pool trip limits for FY 2012, which is the first year the common pool fishery will be subject to the trimester TAC AM.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Framework 47 to the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. Further, pursuant to section 303(c) of the Magnuson-Stevens Act, the Council has deemed this proposed rule as necessary and appropriate to implement Framework 47.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An IRFA, consistent with the Regulatory Flexibility Act (RFA) analysis contained in Framework 47 and the preamble to this proposed rule, has been prepared, as required by section

603 of the RFA. The IRFA consists of this section, the SUMMARY section of the preamble of this proposed rule, and the EA prepared for Framework 47. Another IRFA, incorporated in this summary by reference, was prepared for the proposed rule to approve the 2012 sector operations plans and allocate annual catch entitlements to sectors. The IRFA describes the economic impact this proposed rule would have on small entities if adopted. A description of the action, why it is being considered, and the legal basis for this action are contained in Framework 47, and in the preamble to this rule. This IRFA analyzes expected impacts of the proposed measures in Framework 47, including setting GOM cod specifications based on the new GOM cod assessment. As explained in the preamble, however, the Council did not adopt ABCs for GOM cod in Framework 47, and if approved, Framework 47 would not include GOM cod specifications for FY 2012–2014. Therefore, the following summary also includes expected impacts of this proposed action in the absence of GOM cod specifications. FY 2010, which is the last full fishing year for which data are available, was used as the baseline period in this analysis to estimate the impacts of the proposed action on regulated small entities.

Description and Estimate of the Number of Small Entities To Which the Proposed Rule Will Apply

The measures proposed in Framework 47 would primarily affect commercial groundfish vessels (in a sector or in the common pool) and commercial Atlantic sea scallop vessels. The primary economic impact of the proposed action is associated with the specification of ACLs and sub-ACLs. The size standard for determining small versus large entities for regulated commercial fishing entities (North American Industry Classification System code 114111) is $4 million in sales; regulated entities with less than $4 million in sales are considered small. Multiple vessels may be owned by a single owner, and contrary to the IRFA prepared for Framework 47, data tracking ownership recently became available to determine affiliated entities. However, this IRFA does not analyze the expected impacts of the proposed action using ownership groups, (i.e., ownership of multiple vessels by one owner). Therefore, for the purposes of analysis, each permitted vessel is treated as a single entity, except for vessels participating in the sector program, as described below.

In the IRFA prepared for Framework 47, as explained in Section 8.11.2 of Framework 47, sectors were used as the regulated entity for the first time to estimate impacts of the proposed action. Sectors were used as the entity for analysis, in part, because each vessel's Potential Sector Contribution only becomes fishable quota if the vessel is a member of a sector. Since sectors are allocated Annual Catch Entitlement (ACE), based on the cumulative Potential Sector Contribution of each individual sector member, sectors as an affiliated entity provides a useful approach for analyzing the impacts of Framework 47. This approach is different than the approach used to prepare the IRFA for the proposed rule to implement the 2012 sector operations plans and allocate ACE to sectors, as well as other previous groundfish actions. In the past, individual vessels, not sectors, were used as the regulated entity to estimate impacts of proposed measures on vessels participating in the sector program. NMFS determined that deeming a sector as the regulated entity, for the purposes of analysis under the Regulatory Flexibility Act (RFA), is a useful alternative to analysis of individual vessels for Framework 47. NMFS believes this analysis should also be completed using the individual vessel as the regulated entity to provide continuity with the RFA analyses of previous actions. Therefore, a supplemental analysis has been prepared using individual vessels as the regulated entity to analyze the impacts of Framework 47. This supplemental analysis, which is described below, along with the Framework 47 analysis, gives the public the best opportunity to review the impacts of Framework 47 in the context of prior and concurrent actions.

Under the Framework 47 RFA analysis, which is described in Section 8.11.2 of Framework 47, the entities affected by the proposed action would include 7 large and 10 small regulated entities participating in the sector program, and 342 small regulated entities in the common pool. If using individual vessels as the regulated entity for the sector program, this proposed action would affect 740 small regulated entities enrolled in the sector program. In addition, because the proposed action would decrease the available GB yellowtail flounder, permitted scallop vessels are regulated by this action. Potentially affected entities in the scallop fishery would include 347 limited access scallop vessels and 730 general category scallop vessels. All individual vessels in the sea scallop fishery are considered small business entities under the Small Business Administration criteria.

Using sectors as the regulated entity to estimate impacts of the proposed action, there were 7 large and 10 small regulated entities participating in the sector program in FY 2010. Mean gross sales of fish for the 7 large entities was $13.7 million and approximately $2 million for the 10 small entities. Under the proposed action, 3 large entities would fall below the threshold of $4 million in sales, which would result in 4 large and 13 small regulated entities. Mean gross sales for the large regulated entities are estimated at $9.5 million under the proposed action, which is a 30-percent reduction from the baseline period. Mean gross sales for the small regulated entities is estimated at $0.7 million, which is a 62-percent reduction from the baseline period.

There were 343 commercial groundfish vessels in the common pool that had at least $1 in gross sales from fish during FY 2010. All of these were small regulated entities with mean gross sales of $156,000. Under the proposed action, gross sales from groundfish would be approximately $2,600, which is less than 2 percent of the mean gross sales. Although the proposed action may trigger common pool accountability measures, which would limit opportunities to fish for groundfish, the impact on small regulated entities would likely be insignificant.

Using individual vessels as the regulated entity to estimate the impacts of the proposed action, there were 740 vessels enrolled in the sector program, and 607 common pool vessels, in FY 2010. During the baseline period, there were 446 sector vessels, and 343 common pool vessels, that generated gross sales from any species. 305 sector vessels, and 145 common pool vessels, generated gross sales from groundfish species. No individual vessel generated gross sales in excess of $4 million. Therefore, using individual vessels as the regulated entity, all regulated entities are considered small, and there are no disproportional impacts between small and large entities. Mean gross sales of fish for vessels enrolled in the sector program were $299.9K, and $138.1K for common pool vessels. This proposed action is expected to reduce mean gross sales of fish by 33 percent for sector vessels; mean gross sales of fish are predicted to be $200.1K. Mean gross sales for common pool vessels are expected to decline to $132.6K, which is less than a 5-percent decline.

Mean gross sales for limited access scallop vessels are approximately $1 million, and are approximately $80,000 for general category scallop vessels. The

statistical areas with the highest catch rates of GB yellowtail flounder are 562 and 525. If the proposed action caused a closure of one or both of these areas beginning on March 1, 2013, fishing effort by scallop vessels would be displaced to other locations, primarily the Mid-Atlantic region. Since more than 75 percent of revenues from the Atlantic sea scallop fishery come from statistical areas south of Georges Bank, the impact of a closure in statistical areas 562 or 525 are difficult to anticipate. In addition, during FY 2010, less than 1 percent of total revenues in the scallop fishery came from the statistical areas potentially affected by the proposed action. There were no access area trips taken in the scallop fishery during this time. Opening of portions of statistical area 562 to access area trips could increase the probability of triggering an AM for the scallop fishery and could increase the potential for adverse regulatory impacts to lost access area trips or displaced fishing effort. However, the effect on profitability is likely to be minimal, and because all participating vessels are deemed to be small regulated entities, there are no disproportional impacts.

The primary impact of the proposed action is associated with setting ACLs, which includes specification of sub-ACLs of GB and GOM haddock to the Atlantic herring fishery. Because this action decreases the ABCs for GB and GOM haddock, Atlantic herring vessels are potentially affected by this action. In calendar year 2010, 90 vessels were issued a limited access herring permit and two vessels exceeded $4 million in sales. Approximately 17 percent of the haddock ABCs were landed in FY 2010, and similar utilization of the available quota is expected under the proposed action. Therefore, vessels participating in the Atlantic herring fishery are not expected to be affected by this action.

Of the affected entities under the proposed action, only groundfish sectors and vessels are anticipated to be significantly adversely affected. Due to conservation needs, the proposed action would significantly reduce short-term profits for regulated small entities relative to the baseline period. Regulated small sector entities are estimated to be more adversely impacted by the proposed action than large sector entities. Gross sales for small sector entities would be reduced by 63 percent, and gross sales for large entities would be reduced by 30 percent. These are short-term impacts. In addition, reductions in fishing opportunities due to GOM cod and GB yellowtail flounder sub-ACLs are necessary to ensure rebuilding of these stocks. The ability to lease quota between sectors and consolidate quota within sectors will help mitigate the adverse effect on profitability. In addition, proposed exemptions included in the 2012 sector rule are expected to mitigate impacts as described in the IRFA prepared for the proposed action. However, using sectors as the regulated entities, the proposed action is likely to have a significant impact on regulated small sector entities under the disproportionality criteria. This analysis was based in part on anticipated decreases in the GOM cod catch limits for FY 2012–2014 that were initially proposed as part of this action. However, Framework 47 no longer proposes to set the GOM cod catch limits for FY 2012–2014, as explained in the preamble, and therefore, the expected impacts of this proposed action on regulated small entities are likely to be less.

Economic Impacts of the Proposed Action and Alternatives

The economic impacts of each proposed measure are discussed in more detail in Sections 7.4 and 8.11 of the Framework 47 EA and are summarized below. These analyses use the individual vessel to estimate economic impacts, except as previously described. The proposed ABCs and ACLs are the greatest contributing factor to the economic impacts of the proposed action, particularly the ABCs and ACLs for GOM cod and GB yellowtail flounder. A range of possible ABCs for GOM cod was analyzed, and at the low end, the economic impacts are expected to be severe and negative. The economic impacts of the other proposed measures on the groundfish fishery are less severe. Although these measures could have some negative impacts in the short-term, these measures would have long-term benefits to the fishery.

Revised Status Determination Criteria and GB Yellowtail Flounder Rebuilding Program

Economic impacts of the proposed revisions to the status determination criteria for the three winter flounder stocks and GOM cod primarily occur through the affect these changes have on setting the OFLs, ABCs, and ACLs based on these criteria. Over the long-term, the proposed status determination criteria provide a limit on the potential harvest from the fishery. The proposed MSY values are higher for GB and SNE/MA winter flounder than the current MSY values considered in the no action alternative, which would result in potential revenues of $9.6 million more than the no action alternative. The rebuilding programs for these two stocks would determine how much of this additional revenue would be realized in the fishery.

Economic impacts of the proposed revision to the rebuilding period for GB yellowtail flounder would also occur through the affect these changes would have on setting the specifications each year for this stock. The economic impact of the various rebuilding strategies for GB yellowtail flounder was estimated by calculating the net present value of the potential revenue streams that would occur under each strategy. The proposed strategy to rebuild by 2032 would result in a mean net present value of $234 million, which is approximately 5 percent more than the alternative to rebuild the stock by 2023. The proposed action would also result in much larger returns than the no action alternative, which is scheduled to rebuild the stock by 2016. The no action alternative would constrain scallop fishery on Georges Bank, and may also prevent sector vessels from fishing in the GB yellowtail flounder stock area. Thus, the no action alternative would result in large revenue reductions for the groundfish fishery and the scallop fishery.

Annual Catch Limits

The total potential groundfish revenue of the proposed specifications is estimated to be approximately $61.1 million. This is approximately a 25-percent reduction from the gross groundfish revenues in FY 2010, and a 50-percent reduction from the no action alternative. GOM cod is the constraining stock under this proposed action. The proposed action would allow sustained catches of other GOM stocks, including plaice and witch flounder. In addition, estimates of gross groundfish revenue that were only 25 percent lower than FY 2010 are a result of a likely shift in the fishery to avoid cod and maximize revenues from other stocks. Catch rates could also increase as stocks rebuild, which would make these estimates conservative.

The proposed action would have a negative economic impact across all size classes, gear types, and nearly all hailing ports. Chatham, MA, would be expected to maintain its revenue from groundfish, and groundfish revenues in Boston, MA, would decline by less than 25 percent. New Hampshire would lose over 90 percent of its gross groundfish revenues. Massachusetts would lose 33 percent of its gross revenues under the proposed action. However, Gloucester, MA, would likely have more than a 40-percent reduction in gross groundfish revenue. The 30–50 ft (9.1–15.2 m)

vessel size class would likely be the most adversely affected as the fishery shifts from the nearshore areas west of the Western GOM Closed Area to deeper waters farther east. Analysis also indicates that gillnet would be the most negatively affected gear type. Under this action, GOM cod is the constraining stock, and most of the lost groundfish revenues estimated are a result of low GOM cod catch limits. However, because this action no longer proposes to set the GOM cod catch limits for FY 2012–2014, the potential revenue would likely be higher than initially estimated, which would result in less of a reduction from the FY 2010 gross groundfish revenues.

The no action alternative would set the specifications for FY 2012 as previously adopted by Framework 44 and Framework 45. No specifications would be adopted for FY 2013–2014, with the exception of pollock. FY 2013–2014 specifications for pollock were adopted by Framework 45. The no action alternative, which is the only other alternative considered, would generate the highest groundfish revenue ($114 million), and would likely have positive net benefits relative to FY 2010 across all hailing ports and states, with the exception of Rhode Island, which may lose 30 percent of gross revenues.

U.S./Canada Management Area TACs

Revenues from the FY 2012 proposed TACs for the U.S./Canada Management Area were estimated using two catch scenarios. In the first scenario, total landings in FY 2012 were assumed to be 75 percent of the TAC for Eastern GB cod and GB yellowtail flounder and 15 percent of the TAC for Eastern GB haddock. Under this catch scenario, estimated revenues from the U.S./Canada Management Area are between 46 and 57 percent lower than FY 2010 revenues. However, because the FY 2012 TACs are lower, a larger proportion of the TAC may be caught in FY 2012. In the second scenario, total landings in FY 2012 were assumed to be 100 percent of the Eastern GB cod and GB yellowtail flounder TAC and 30 percent of the Eastern GB haddock TAC. The estimated revenues are greater for all stocks in this scenario compared to the first scenario, and are 42 percent and 28 percent lower than FY 2010 for Eastern GB cod and GB yellowtail flounder, respectively. If more of the U.S. TAC for Eastern GB haddock is caught, revenues would increase by approximately 3 percent compared to FY 2010. The no action alternative would not specify TACs for the U.S./Canada Management Area. In comparison to the no action alternative, the proposed action would have short-term positive economic impacts.

In addition, because the FY 2012 TACs are lower than the FY 2011 TACs, the proposed action would likely result in reduced overall revenue from the U.S./Canada Management Area. This reduced revenue would be due to both the decrease in potential landings of Eastern GB cod and GB yellowtail flounder, as well as a loss of revenue from other stocks caught on trips to the Eastern U.S./Canada Area if vessels lose access to this area when a pertinent TAC is projected to be caught. Although the Eastern GB haddock TAC will not limit haddock catch, access to haddock may be impacted by the reduced FY 2012 TACs for Eastern GB cod and GB yellowtail flounder. Reductions in revenue could be mitigated if vessels are able to minimize the catch of Eastern GB cod and maximize the catch of Eastern GB haddock.

Different impacts would likely be realized by common pool and sector vessels due to the nature of the operations of such groups and applicable regulations. Unlike vessels operating within the same sector, the common pool is unable to actively coordinate fishing operations to maximize fishing revenue based upon resource availability and market price. Therefore, impacts on common pool vessels will be dependent upon the overall rate at which available TACs are caught, and whether any responsive measures necessary to prevent such TACs from being exceeded are triggered. Further, once the available ACE for a particular stock is caught, sectors must cease fishing operations in the entire stock area unless they lease in additional ACE for the pertinent stock. In contrast, while common pool vessels may be subject to more restrictive DAS or trip limits in a particular area, they could continue to fish in the Western U.S./Canada Area even after the GB yellowtail flounder TAC is caught, provided they do not retain any GB yellowtail flounder.

The other alternative considered, the no action alternative, would result in decreased revenue in FY 2012 as a result of no TACs being specified for the U.S./Canada Management Area. Due to limited fishing opportunities under this alternative, the long-term economic impacts would likely be negative compared to the proposed action. However, stock rebuilding could occur more quickly under this alternative, and the associated revenue resulting from an increasing stock size would likely provide long-term economic impacts.

Common Pool Restricted Gear Areas

The proposed action to remove the Western GB Multispecies and SNE Multispecies RGAs would be expected to increase revenues for common pool vessels when compared to the no action alternative. Removals of these RGAs would likely increase the common pool landings of SNE/MA yellowtail flounder. In FY 2010, only 26 percent of the common pool sub-ACL for this stock was caught. Based on this percentage of catch, and the SNE/MA yellowtail flounder ACLs proposed in this action, removing the RGAs would result in increased landings of this stock by 129 mt. These increased landings are estimated at $370,000. In addition, removal of the RGAs may reduce costs for common pool vessels because vessel operators would not be required to purchase selective gear to fish in these areas.

The no action alternative would restrict revenue for common pool vessels because the requirement to use selective gear would make fishing by common pool vessels less efficient. Under this alternative, common pool catch of stocks in Southern New England would be restricted, which may prevent the common pool from utilizing more of its available quota. This alternative may also increase costs for common pool vessels if the vessel must purchase selective gear to fish in the RGAs.

Accountability Measures

The economic impacts of the revisions to the AMs for windowpane flounder, ocean pout, Atlantic halibut, Atlantic wolffish, and SNE/MA winter flounder were analyzed by estimating changes in fishing vessel revenue that would occur if the proposed AM was triggered. The small AM areas for northern and southern windowpane flounder and ocean pout account for approximately $7 million of total revenue by groundfish vessels fishing in these areas. Only a portion of these revenues would be affected by this proposed AM because vessels could still fish inside these areas with selective gear. Catch data indicate that the composition of the catch inside these proposed AM areas would change substantially with the use of selective gear. Selective gear inside the AM areas catch a higher proportion of haddock and a lower proportion of flatfish relative to traditional trawl gears. Average revenues per tow for selective gears in this area were approximately 31 percent higher than the revenues per tow using traditional trawl gears. Depending on the profitability of other

fishing options, vessels may also elect to fish in other areas rather than fish inside the AM area with selective gear. Given the relatively small size of these proposed AM areas, additional trip costs for fishing in other areas are likely negligible.

The large AM areas proposed for northern and southern windowpane flounder and ocean pout account for approximately $15 million of total revenue by groundfish vessels fishing in these areas. Approximately 75 percent of these revenues come from New Bedford, MA, and $1.7 million comes from Point Judith, RI. Similar to the small AM areas proposed, use of selective gears inside the large AM areas would substantially change the composition of catch and likely result in higher proportions of haddock caught and lower proportions of flatfish catch relative to traditional trawl gears. Revenues affected by these AM areas could likely be recovered by using selective gear or fishing in other areas.

Overall, the proposed AM for northern and southern windowpane flounder and ocean pout would result in negative economic impacts compared to the no action alternative. This AM would affect fishing behavior and apply to all commercial groundfish vessels. Under this proposed measure, fishermen would have to alter their behavior, which could impose additional costs. The greatest economic impact could reduce revenues by $15 million if the large AM areas are implemented simultaneously due to an overage of the total ACL for both stocks of windowpane flounder, or if the total ACL is exceeded for ocean pout.

The proposed AM for Atlantic halibut would prohibit possession in year 3 if the total ACL is exceeded in year 1. The maximum revenue loss from this proposed AM would be the value of the ACL during year 3. In FY 2012–2014, the groundfish sub-ACL is 36 mt, which would result in approximately $400,000 in groundfish revenues. This revenue loss is greater than in the no action alternative because the AM would apply to sector and common pool vessels. The proposed AM for Atlantic wolffish and SNE/MA winter flounder would maintain the prohibition on possession for these two stocks. Because possession of these two stocks is currently prohibited, this proposed measure would not be expected to result in any revenue loss.

The no action alternative for Atlantic wolffish and SNE/MA winter flounder would require closure of statistical areas to common pool vessels if sector and common pool catch exceeded the common pool sub-ACL for these stocks. This could lead to derby effects since fishing activity would be constrained if the AM is triggered. The no action alternative for Atlantic halibut would require adjustment to trip limits for common pool vessels. Since the current possession limit is one fish per day, the only possible trip limit adjustment would be to decrease the possession limit to zero, and prohibit possession of this stock. Common pool revenues could be reduced by $25,000 compared to FY 2010 if possession of this stock was prohibited. The no action alternatives for windowpane flounder and ocean pout are expected to have no economic impacts because possession of these stocks is already prohibited.

Removal of Cap on Yellowtail Flounder Catch in GB Scallop Access Areas

This proposed measure would not be expected to have any economic impacts on the groundfish fishery. Elimination of the 10-percent yellowtail flounder access area caps would reduce the incentive for derby fishing, and would likely have positive impacts on the scallop fishery compared to the no action alternative. However, removing the 10-percent access area caps could increase the risk for the scallop fishery to exceed its sub-ACL for yellowtail flounder if the scallop fishery catches more yellowtail flounder in the access areas than projected. This would trigger the scallop fishery AMs, which would restrict fishing, reduce scallop landings, and increase fishing costs. The no action alternative would increase the incentive for derby fishing and may have negative impacts on the scallop fishery. Some of these negative impacts could be mitigated because vessels can transfer unused access area trips to open areas if an access area closes.

Implementation of the Scallop Fishery AM

The proposed revisions to the implementation of the scallop fishery AM would not be expected to have any economic impacts on the groundfish fishery. The proposed revision would have a positive economic impact on the scallop fishery because the scallop fishery AMs would not be triggered if less than 150 percent of the scallop fishery sub-ACL for GB and SNE/MA yellowtail flounder is caught, or if the total ACL is not exceeded. This would prevent effort shifts to less optimal areas by scallop vessels, as well as effort shifts into seasons with lower meat weights for scallops. The no action alternative would not modify the trigger for the scallop fishery AM, and the pertinent AM would be triggered if the scallop fishery exceeds its sub-ACL by 1 percent or more. The proposed measure would minimize negative economic impacts to the scallop fishery compared to the no action alternative and would prevent the loss of scallop landings, revenues, and increased fishing costs that would result under the no action alternative.

Inseason Re-Estimation of Scallop Fishery GB Yellowtail Flounder Sub-ACL

The proposed measure would have positive economic benefits for the groundfish fishery. These benefits would only occur in years when the scallop fishery is not projected to catch its initial sub-ACL, and the groundfish sub-ACL is increased mid-fishing year. When additional quota is made available to the groundfish fishery, revenues for the groundfish fishery would be expected to increase if groundfish vessels are able to catch additional GB yellowtail flounder. However, compared to the no action alternative, this measure could have negative impacts if the inseason re-estimation of projected yellowtail flounder catch by the scallop fishery is incorrect. If the scallop fishery sub-ACL is reduced in error, and subsequently the groundfish sub-ACL is increased, total catch of GB yellowtail flounder could exceed the U.S. TAC. Any overage of the U.S. TAC for GB yellowtail is deducted from the following year's TAC. Because the allocation of GB yellowtail flounder is set in advance, and does not vary with changes to the overall TAC, the catch available to the groundfish fishery would be reduced.

The no action alternative would not provide a mechanism to re-estimate the scallop fishery GB yellowtail flounder sub-ACL mid-fishing year and adjust the groundfish fishery sub-ACL. The no action alternative would have negative impacts on the scallop fishery if a yellowtail flounder AM is triggered and effort shifts to areas and seasons with lower scallop catch rates and meat weights. This could increase fishing costs as scallop vessels fish in less optimal areas, and scallop revenues would decline. The current AM trigger for the scallop fishery would result in lower profits, lower crew incomes, and less economic benefits than the proposed action.

Regulatory Changes Not Included in Framework 47

There are several changes proposed in this rule that are considered to be mostly administrative in nature and do not affect individual vessel operations that would result in any economic impact to regulated entities. These changes include modifying the

definition of the Ruhle trawl, reinserting text defining stock areas applicable to sector vessels, revising the methodology used to attribute fillets, fish parts, and fish landed for at-home consumption to the pertinent ACL, and clarifying the regulations for charter/party and recreational groundfish vessels fishing in groundfish closed areas. This proposed change to the at-home consumption conversion factors would implement a more precise method using species-specific conversion factors, which would be expected to have positive impacts on the fishery due to improved quota monitoring. In addition, this rule proposes to broaden the definition of the Ruhle trawl to include the mid-size Eliminator trawl Ruhle trawl for use in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP. This proposed revision would provide more flexibility for the groundfish fishery in the use of trawl gear that minimizes catch of stocks of concern. The additional exempted gear option would provide vessels a choice of the most cost-effective means of targeting healthy stocks. Vessels choosing to use the mid-size Eliminator trawl would incur the purchase cost of the gear.

Measures Proposed To Mitigate Adverse Economic Impacts of the Proposed Action

During the development of Framework 47, NMFS and the Council considered ways to reduce the regulatory burden on, and provide flexibility for, the regulated entities in this proposed action. Proposed actions and alternatives are described in detail in Framework 47, which includes an EA, RIR, and IRFA (available at ADDRESSES). The proposed action contains several measures that would provide small entities with some ability to offset at least some portion of the estimated economic impacts associated with the proposed measures. The delay in the implementation of the area-based AMs for windowpane flounder and ocean pout will give fishermen time to plan their fishing operations in order to mitigate the economic impacts of this proposed measure. In addition, the proposed removal of the Western GB and SNE Multispecies RGAs for common pool vessels would also mitigate the economic impacts of the proposed action by allowing common pool vessels more flexibility to catch the pertinent sub-ACLs, as well as reducing the potential costs of fishing in these areas with selective gear. In addition, the re-estimation of the GB yellowtail flounder sub-ACL would help mitigate adverse economic impacts of the proposed action by allowing increased landings of this stock by the groundfish fishery. These increased landings would be expected to increase revenues for the groundfish fishery. In addition, proposed exemptions for sector vessels in the 2012 sector rule could also mitigate negative impacts of this proposed action.

Eliminating the cap on yellowtail flounder catch in the Nantucket, Closed Area I, and Closed Area II Sea Scallop Access Areas would reduce the incentive for derby fishing in the access areas, which would have positive impacts for scallop vessels. The revision to the scallop fishery AM trigger would also be expected to have positive impacts on the scallop fishery. This measure would prevent effort shifts to less optimal areas and seasons with lower scallop meat weights and would minimize reduced scallop revenues and increased fishing costs.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

This action contains no new collection-of-information, reporting, or recordkeeping requirements. This action does not duplicate, overlap, or conflict with any other Federal law.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 19, 2012.

Samuel D. Rauch III,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.14,

a. Remove and reserve paragraphs (i)(2)(vi)(B), (i)(2)(vi)(C), and (i)(3)(v)(C);

b. Remove paragraph (k)(7)(i)(C)(*4*); and

c. Revise paragraph (k)(13)(ii)(B) and add paragraph (k)(20) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(k) * * *

(13) * * *

(ii) * * *

(B) Possess or land per trip more than the possession or landing limits specified in § 648.86(a), (b), (c), (e), (g), (h), (j), (l), (m), (n), and (o); § 648.82(b)(5) and (6); § 648.85; or § 648.88, if the vessel has been issued a limited access NE multispecies permit or open access NE multispecies permit, as applicable.

* * * * *

(20) *AMs for both stocks of windowpane flounder and ocean pout.* It is unlawful for any person, including any owner or operator of a vessel issued a valid Federal NE multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to fail to comply with the restrictions on fishing and gear specified in § 648.90(a)(D).

5. In § 648.60, paragraphs (a)(5)(ii)(C)(*1*) and (a)(5)(ii)(C)(*3*) are removed and reserved, and paragraph (g)(1) is revised to read as follows:

§ 648.60 Sea scallop area access program requirements.

* * * * *

(g) * * * (1) An LAGC scallop vessel may only fish in the scallop access areas specified in § 648.59(a) through (e), subject to the seasonal restrictions specified in § 648.59(b)(4), (c)(4), and (d)(4), and subject to the possession limit specified in § 648.52(a), and provided the vessel complies with the requirements specified in paragraphs (a)(1), (a)(2), (a)(6) through (a)(9), (d), (e), (f), and (g) of this section. A vessel issued both a NE multispecies permit and an LAGC scallop permit may fish in an approved SAP under § 648.85 and under multispecies DAS in the Closed Area I, Closed Area II, and Nantucket Lightship Sea Scallop Access Areas specified in § 648.59(b) through (d), provided the vessel complies with the requirements specified in § 648.59(b)(5)(ii), (c)(5)(ii), and (d)(5)(ii), and this paragraph (g), but may not fish for, possess, or land scallops on such trips.

* * * * *

6. In § 648.64, the introductory text of paragraph (a) and paragraphs (b)(1) and (c)(1) are revised to read as follows:

§ 648.64 Yellowtail flounder sub-ACLs and AMs for the scallop fishery.

(a) As specified in § 648.55(d), and pursuant to the biennial framework adjustment process specified in § 648.90, the scallop fishery shall be allocated a sub-ACL for the Georges Bank and Southern New England/Mid-Atlantic stocks of yellowtail flounder. Unless otherwise specified in § 648.90(a)(4)(iii)(C) of the NE multispecies regulations, the sub-ACLs for the 2011 through 2013 fishing years are as follows:

* * * * *

(b) * * * (1) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE

multispecies regulations, if the Georges Bank yellowtail flounder sub-ACL for the scallop fishery is exceeded, the area defined by the following coordinates shall be closed to scallop fishing by vessels issued a limited access scallop permit for the period of time specified in paragraph (b)(2) of this section:

GEORGES BANK YELLOWTAIL CLOSURE

Point	N. lat.	W. long.
GBYT AM 1	41°50′	66°51.94′
GBYT AM 2	40°30.75′	65°44.96′
GBYT AM 3	40°30′	66°40′
GBYT AM 4	40°40′	66°40′
GBYT AM 5	40°40′	66°50′
GBYT AM 6	40°50′	66°50′
GBYT AM 7	40°50′	67°00′
GBYT AM 8	41°00′	67°00′
GBYT AM 9	41°00′	67°20′
GBYT AM 10	41°10′	67°20′
GBYT AM 11	41°10′	67°40′
GBYT AM 12	41°50′	67°40′
GBYT AM 1	41°50′	66°51.94′

* * * * *

(c) * * * (1) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL for the scallop fishery is exceeded, the area defined by the following coordinates shall be closed to scallop fishing by vessels issued a limited access scallop permit for the period of time specified in paragraph (c)(2) of this section:

SOUTHERN NEW ENGLAND YELLOWTAIL CLOSURE

Point	N. lat.	W. long.
SNEYT AM 1	41°28.4′	71°10.25′
SNEYT AM 2	41°28.57′	71°10′
SNEYT AM 3	41°20′	71°10′
SNEYT AM 4	41°20′	70°50′
SNEYT AM 5	41°20′	70°30′
SNEYT AM 6	41°18′	70°15′
SNEYT AM 7	41°17.69′	70°12.54′
SNEYT AM 8	41°14.73′	70°00′
SNEYT AM 9	39°50′	70°00′
SNEYT AM 10	39°50′	71°00′
SNEYT AM 11	39°50′	71°40′
SNEYT AM 12	40°00′	71°40′
SNEYT AM 13	40°00′	73°00′
SNEYT AM 14	40°41.23′	73°00′
SNEYT AM 15	41°00′	71°55′
SNEYT AM 16	41°00′	71°40′
SNEYT AM 17	41°20′	71°40′
SNEYT AM 18	41°21.15′	71°40′

* * * * *

7. In § 648.81, revise paragraphs (c)(2)(ii)(B), (f)(2)(iii)(B), and (n), and remove paragraph (o) to read as follows:

§ 648.81 NE multispecies closed areas and measures to protect EFH.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) Fish species managed by the NEFMC or MAFMC that are harvested or possessed by the vessel, are not sold or intended for trade, barter or sale, regardless of where the fish are caught; and

* * * * *

(f) * * *

(2) * * *

(iii) * * *

(B) Fish species managed by the NEFMC or MAFMC that are harvested or possessed by the vessel, are not sold or intended for trade, barter or sale, regardless of where the fish are caught; and

* * * * *

(n) *GOM Cod Spawning Protection Area.* (1) Except as specified in paragraph (o)(2) of this section, from April through June of each year, no fishing vessel or person on a fishing vessel may enter, fish in, or be in; and no fishing gear capable of catching NE multispecies may be used on, or be on board, a vessel in the GOM Cod Spawning Protection Area, as defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the RA upon request):

GOM COD SPAWNING PROTECTION AREA

Point	N. Latitude	W. Longitude
CSPA1	42°50.95′	70°32.22′

GOM COD SPAWNING PROTECTION AREA—Continued

Point	N. Latitude	W. Longitude
CSPA2	42°47.65′	70°35.64′
CSPA3	42°54.91′	70°41.88′
CSPA4	42°58.27′	70°38.64′
CSPA1	42°50.95′	70°32.22′

(2) Paragraph (n)(1) of this section does not apply to persons on a fishing vessel or fishing vessels:

(i) That have not been issued a NE multispecies permit and that are fishing exclusively in state waters;

(ii) That are fishing with or using exempted gear as defined under this part, excluding pelagic gillnet gear capable of catching NE multispecies, except for vessels fishing with a single pelagic gillnet not longer than 300 ft (91.4 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.6 cm), provided:

(A) The net is attached to the vessel and fished in the upper two-thirds of the water column;

(B) The net is marked with the vessel owner's name and vessel identification number;

(C) There is no retention of regulated species or ocean pout; and

(D) There is no other gear on board capable of catching NE multispecies;

(iii) That are fishing as a charter/party or recreational fishing vessel, provided that:

(A) With the exception of tuna, fish harvested or possessed by the vessel are not sold or intended for trade, barter, or sale, regardless where the species are caught;

(B) The vessel has no gear other than pelagic hook and line gear, as defined in this part, on board unless that gear is properly stowed pursuant to § 648.23(b); and

(C) There is no retention of regulated species, or ocean pout; and

(iv) That are transiting pursuant to paragraph (i) of this section.

8. In § 648.82,

a. Remove paragraphs (n)(2)(ii)(O) and (n)(2)(ii)(P)

b. Revise paragraphs (n)(2)(i)(A), (n)(2)(ii) introductory text, and (n)(2)(ii)(L) through (n)(2)(ii)(N):

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(n) * * *

(2) * * *

(i) *Trimester TACs.* (A) *Trimester TAC distribution.* Any sub-ACLs specified for common pool vessels pursuant to § 648.90(a)(4) shall be apportioned into trimesters of 4 months in duration, beginning at the start of the fishing year (i.e., Trimester 1: May 1–August 31; Trimester 2: September 1–December 31; Trimester 3: January 1–April 30), as follows):

PORTION OF COMMON POOL SUB-ACLS APPORTIONED TO EACH STOCK FOR EACH TRIMESTER

Stock (percent)	Trimester 1 (percent)	Trimester 2 (percent)	Trimester 3 (percent)
GOM Cod	27	36	37
GB Cod	25	37	38
GOM Haddock	27	26	47
GB Haddock	27	33	40
CC/GOM Yellowtail Flounder	35	35	30
GB Yellowtail Flounder	19	30	52
SNE/MA Yellowtail Flounder	21	37	42
GOM Winter Flounder	37	38	25
GB Winter Flounder	8	24	69
Witch Flounder	27	31	42
American Plaice	24	36	40
Pollock	28	35	37
Redfish	25	31	44
White Hake	38	31	31

* * * * *

(ii) *Stock area closures.* If the Regional Administrator projects that 90 percent of the trimester TACs specified in paragraph (n)(2)(i) of this section will be caught based upon available information, the Regional Administrator shall close the area where 90 percent of the catch for each such stock occurred, according to available VTR data and other information, to all common pool vessels using gear capable of catching such stocks for the remainder of that trimester, as specified in paragraphs (n)(2)(ii)(A) through (P) of this section, in a manner consistent with the Administrative Procedure Act. For example, if the Regional Administrator projects that 90 percent of the CC/GOM yellowtail flounder Trimester 1 TAC will be caught, common pool vessels using trawl and gillnet gear shall be prohibited from fishing in the CC/GOM Yellowtail Flounder Closure Area specified in paragraph (n)(2)(ii)(G) of this section until the beginning of Trimester 2 on September 1 of that fishing year. Based upon all available information, the Regional Administrator is authorized to expand or narrow the areas closed under this paragraph (n)(2)(ii) in a manner consistent with the Administrative Procedure Act. If it is not possible to identify an area where only 90 percent of the catch occurred, the Regional Administrator shall close the smallest area possible where greater than 90 percent of the catch occurred.

* * * * *

(L) *Redfish Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the Redfish Trimester TAC Area shall apply to common pool vessels using trawl gear within the area bounded by straight lines connecting the following points in the order stated:

REDFISH TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
RF1	(1)	69°20′
RF2	43°40′	69°20′
RF3	43°40′	69°00′
RF4	43°20′	69°00′
RF5	43°20′	67°40′
RF6	(2)	67°40′
RF7	42°53.1′	67°44.4′
RF8	(2)	67°40′
RF9	41°20′	67° 40′
RF10	41°20′	68°10′
RF11	41°10′	68°10′
RF12	41°10′	68°20′
RF13	41°00′	68°20′
RF14	41°00′	69°30′
RF15	41°10′	69°30′
RF16	41°10′	69°50′
RF17	41°20′	69°50′
RF18	41°20′	(3)
RF19	(4)	70°00′
RF20	(5)	70°00′

[1] Intersection with ME shoreline.
[2] U.S./Canada maritime boundary.
[3] East-facing shoreline of Nantucket, MA.
[4] North-facing shoreline of Nantucket, MA.
[5] South-facing shoreline of Cape Cod, MA.

(M) *White Hake Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the White Hake Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded by straight lines connecting the following points in the order stated:

WHITE HAKE TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
RF1	(1)	69°20′
RF2	43°40′	69°20′
RF3	43°40′	69°00′
RF4	43°20′	69°00′
RF5	43°20′	67°40′
RF6	(2)	67°40′
RF7	42°53.1′	67°44.4′
RF8	(2)	67°40′
RF9	41°20′	67°40′
RF10	41°20′	68°10′
RF11	41°10′	68°10′
RF12	41°10′	68°20′
RF13	41°00′	68°20′
RF14	41°00′	69°30′
RF15	41°10′	69°30′
RF16	41°10′	69°50′
RF17	41°20′	69°50′
RF18	41°20′	(3)
RF19	(4)	70°00′
RF20	(5)	70°00′

[1] Intersection with ME shoreline.
[2] U.S./Canada maritime boundary.
[3] East-facing shoreline of Nantucket, MA.
[4] North-facing shoreline of Nantucket, MA.
[5] South-facing shoreline of Cape Cod, MA.

(N) *Pollock Trimester TAC Area.* For the purposes of the trimester TAC AM closure specified in paragraph (n)(2)(ii) of this section, the Pollock Trimester TAC Area shall apply to common pool vessels using trawl gear, sink gillnet gear, and longline/hook gear within the area bounded by straight lines connecting the following points in the order stated:

POLLOCK TRIMESTER TAC AREA

Point	N. Latitude	W. Longitude
RF1	(1)	69°20′
RF2	43°40′	69°20′
RF3	43°40′	69°00′
RF4	43°20′	69°00′
RF5	43°20′	67°40′
RF6	(2)	67°40′
RF7	42°53.1′	67°44.4′
RF8	(2)	67°40′
RF9	41°20′	67°40′
RF10	41°20′	68°10′
RF11	41°10′	68°10′
RF12	41°10′	68°20′
RF13	41°00′	68°20′
RF14	41°00′	69°30′
RF15	41°10′	69°30′
RF16	41°10′	69°50′
RF17	41°20′	69°50′
RF18	41°20′	(3)
RF19	(4)	70°00′
RF20	(5)	70°00′

[1] Intersection with ME shoreline.
[2] U.S./Canada maritime boundary.
[3] East-facing shoreline of Nantucket, MA.
[4] North-facing shoreline of Nantucket, MA.
[5] South-facing shoreline of Cape Cod, MA.

* * * * *

9. In § 648.83 revise paragraph (b)(1) to read as follows:

§ 648.83 Multispecies minimum fish sizes.

* * * * *

(b) * * *(1) Each person aboard a vessel issued a NE multispecies limited access permit and fishing under the NE multispecies DAS program or on a sector trip may possess up to 25 lb (11.3 kg) of fillets that measure less than the minimum size, if such fillets are from legal-sized fish and are not offered or intended for sale, trade, or barter.

(i) For the purpose of determining compliance with common pool possession limits, on board the vessel, and at the time of landing, as specified at § 648.86, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, shall be multiplied by 3.

(ii) For the purpose of accounting for all catch by sector vessels, as specified at § 648.87(b)(1)(v), the weight of all fillets and parts of fish, other than whole-gutted or gilled fish reported for at-home consumption, shall be multiplied by the conversion factors provided in writing by the Regional Administrator.

(iii) For the purposes of accounting for all catch by common pool vessels and monitoring sub-ACLs, the weight of all fillets and parts of fish, other than whole-gutted or gilled fish reported for at-home consumption shall be multiplied by the conversion factors provided in writing by the Regional Administrator.

* * * * *

10. In § 648.85,

a. Remove paragraphs (b)(6)(iv)(J)(*3*)(*vi*), (c)(1), (c)(2), and (c)(3); and

b. Revise paragraphs (b)(5) and (b)(6)(iv)(J)(*3*)(*i*) through (b)(6)(iv)(J)(*3*)(*v*) to read as follows:

§ 648.85 Special management programs.

* * * * *

(b) * * *

(5) *Incidental Catch TACs.* Unless otherwise specified in this paragraph (b)(5), Incidental Catch TACs shall be based upon the portion of the ACL for a stock specified for the common pool vessels pursuant to § 648.90(a)(4), and allocated as described in this paragraph (b)(5), for each of the following stocks: GOM cod, GB cod, GB yellowtail flounder, GB winter flounder, CC/GOM yellowtail flounder, American plaice, white hake, SNE/MA yellowtail flounder, SNE/MA winter flounder, and witch flounder. Because GB yellowtail flounder and GB cod are transboundary stocks, the incidental catch TACs for these stocks shall be based upon the common pool portion of the ACL available to U.S. vessels. NMFS shall send letters to limited access NE multispecies permit holders notifying them of such TACs.

(i) *Stocks other than GB cod, GB yellowtail flounder, and GB winter flounder.* With the exception of GB cod, GB yellowtail flounder, and GB winter flounder, 100 percent of the Incidental Catch TACs specified in this paragraph (b)(5) shall be allocated to the Regular B DAS Program described in paragraph (b)(6) of this section.

(ii) *GB cod.* The Incidental Catch TAC for GB cod specified in this paragraph (b)(5) shall be subdivided as follows: 50 percent to the Regular B DAS Program described in paragraph (b)(6) of this section; 16 percent to the CA I Hook Gear Haddock SAP described in paragraph (b)(7) of this section; and 34 percent to the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8) of this section.

* * * * *

(6) * * *

(iv) * * *

(J) * * *

(*3*) * * *

(*i*) The net must be constructed with four seams (i.e., a net with a top and bottom panel and two side panels), and include at least the following net sections as depicted in Figure 1 of this part (this figure is also available from the Administrator, Northeast Region): Top jib, bottom jib, jib side panels (× 2), top wing, bottom wing, wing side panels (× 2), bunt, square, square side panels (× 2), first top belly, first bottom belly, first belly side panels (× 2), and second bottom belly.

(*ii*) The top and bottom jibs, jib side panels, top and bottom wings, and wing side panels, bunt, and first bottom belly (the first bottom belly and all portions of the net in front of the first bottom belly, with the exception of the square

and the square side panels) must be at least two meshes long in the fore and aft direction. For these net sections, the stretched length of any single mesh must be at least 7.9 ft (240 cm), measured in a straight line from knot to knot.

(*iii*) Mesh size in all other sections must be consistent with mesh size requirements specified under § 648.80 and meet the following minimum specifications: Each mesh in the square, square side panels, and second bottom belly must be 31.5 inches (80 cm); each mesh in the first top belly, and first belly side panels must be at least 7.9 inches (20 cm); and 6 inches (15.24 cm) or larger in sections following the first top belly and second bottom belly sections, all the way to the codend. The mesh size requirements of the top sections apply to the side panel sections.

(*iv*) The trawl must have at least 15 meshes (240 cm each) at the wide end of the first bottom belly, excluding the gore.

(*v*) The trawl must have a single or multiple kite panels with a total surface area of at least 19.3 sq. ft. (1.8 sq. m) on the forward end of the square to help maximize headrope height, for the purpose of capturing rising fish. A kite panel is a flat structure, usually semi-flexible, used to modify the shape of trawl and mesh openings by providing lift when a trawl is moving through the water.

* * * * *

11. In § 648.86, revise paragraph (c) to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(c) *Atlantic halibut.* A vessel issued a NE multispecies permit under § 648.4(a)(1) may land or possess on board no more than one Atlantic halibut per trip, provided the vessel complies with other applicable provisions of this part, unless otherwise specified in § 648.90(a)(5)(i)(D)(*2*).

12. In § 648.87, revise paragraph (c)(2)(i) to read as follows:

§ 648.87. Sector allocation.

* * * * *

(c) * * *

(2) * * *

(i) *Regulations that may not be exempted for sector participants.* The Regional Administrator may not exempt participants in a sector from the following Federal fishing regulations: NE multispecies year-round closure areas; permitting restrictions (e.g., vessel upgrades, etc.); gear restrictions designed to minimize habitat impacts (e.g., roller gear restrictions, etc.); reporting requirements; and AMs specified at § 648.90(a)(5)(i)(D). For the purposes of this paragraph (c)(2)(i), the DAS reporting requirements specified at § 648.82; the SAP-specific reporting requirements specified at § 648.85; and the reporting requirements associated with a dockside monitoring program specified in paragraph (b)(5)(i) of this section are not considered reporting requirements, and the Regional Administrator may exempt sector participants from these requirements as part of the approval of yearly operations plans. This list may be modified through a framework adjustment, as specified in § 648.90.

* * * * *

13. In § 648.89, revise paragraphs (e)(1) and (e)(3)(ii) to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(e) *Charter/party vessel restrictions on fishing in GOM closed areas and the Nantucket Lightship Closed Area* —(1) *GOM Closed Areas.* Unless otherwise specified in this paragraph (e)(1), a vessel fishing under charter/party regulations may not fish in the GOM closed areas specified at § 648.81(d)(1) through (f)(1) during the time periods specified in those paragraphs, unless the vessel has on board a valid letter of authorization issued by the Regional Administrator pursuant to § 648.81(f)(2)(iii) and paragraph (e)(3) of this section. The conditions and restrictions of the letter of authorization must be complied with for a minimum of 3 months if the vessel fishes or intends to fish in the seasonal GOM closure areas; or for the rest of the fishing year, beginning with the start of the participation period of the letter of authorization, if the vessel fishes or intends to fish in the year-round GOM closure areas. A vessel fishing under charter/party regulations may not fish in the GOM Cod Spawning Protection Area specified at § 648.81(n)(1) during the time period specified in that paragraph, unless the vessel complies with the requirements specified at § 648.81(n)(2)(iii).

* * * * *

(3) * * *

(ii) Fish species managed by the NEFMC or MAFMC that are harvested or possessed by the vessel, are not sold or intended for trade, barter or sale, regardless of where the fish are caught;

* * * * *

14. In § 648.90, revise paragraph (a)(4)(iii)(C) and add paragraphs (a)(5)(i)(D), (a)(5)(i)(E), and (a)(5)(iv) to read as follows:

§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.

* * * * *

(a) * * *

(4) * * *

(iii) * * *

(C) *Yellowtail flounder catch by the Atlantic sea scallop fishery.* Yellowtail flounder catch in the Atlantic sea scallop fishery, as defined in subpart D, shall be deducted from the ABC/ACL for each yellowtail flounder stock pursuant to the restrictions specified in subpart D of this part and the process to specify ABCs and ACLs, as described in paragraph (a)(4) of this section. Unless otherwise specified in this paragraph (a)(4)(iii)(C), or subpart D of this part, the specific value of the sub-components of the ABC/ACL for each stock of yellowtail flounder distributed to the Atlantic sea scallop fishery shall be specified pursuant to the biennial adjustment process specified in paragraph (a)(2) of this section. Based on information available, NMFS shall re-estimate the expected scallop fishery catch of GB yellowtail flounder for the current fishing year by January 15. If NMFS determines that the scallop fishery will catch less than 90 percent of its GB yellowtail flounder sub-ACL, the Regional Administrator may reduce the scallop fishery sub-ACL to the amount projected to be caught, and increase the groundfish fishery sub-ACL by any amount up to the amount reduced from the scallop fishery sub-ACL. The revised groundfish fishery sub-ACL shall be distributed to the common pool and sectors based on the process specified in paragraph (a)(4)(E)(*1*) of this section.

* * * * *

(5) * * *

(i) * * *

(D) *AMs for both stocks of windowpane flounder, ocean pout, and Atlantic halibut.* At the end of each fishing year, NMFS shall determine if the overall ACL for northern windowpane flounder, southern windowpane flounder, ocean pout, or Atlantic halibut was exceeded. If the overall ACL for any of these stocks is exceeded, NMFS shall implement the appropriate AM, as specified in this paragraph (a)(5)(i)(D), in the second fishing year after the fishing year in which the overage occurred, consistent with the Administrative Procedure Act. For example, if NMFS determined the overall ACL for northern windowpane flounder was exceeded in fishing year

2012, the applicable AM would be implemented for fishing year 2014.

(*1*) *Windowpane flounder and ocean pout.* If NMFS determines the overall ACL for either stock of windowpane flounder or ocean pout is exceeded, as described in this paragraph (a)(5)(i)(D)(*1*), by any amount between the management uncertainty buffer and 20 percent, the applicable small AM area for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section. If the overall ACL is exceeded by 21 percent or more, the applicable large AM area for the stock shall be implemented, as specified in paragraph (a)(5)(i)(D) of this section. Any vessel issued a limited access NE multispecies permit and fishing with trawl gear in these areas may only use a haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(*3*); a rope separator trawl, as specified in § 648.81(n)(3)(i)(A); or any other gear approved consistent with the process defined in § 648.85(b)(6). If a sub-ACL for either stock of windowpane flounder or ocean pout is allocated to another fishery, consistent with the process specified at § 648.90(a)(4), and AMs are developed for that fishery, the groundfish fishery AM shall only be implemented if the sub-ACL allocated to the groundfish fishery is exceeded (i.e., the sector and common pool catch for a particular stock, including the common pool's share of any overage of the overall ACL caused by excessive catch by other sub-components of the fishery pursuant to § 648.90(a)(5) exceeds the common pool sub-ACL) and the overall ACL is also exceeded.

NORTHERN WINDOWPANE FLOUNDER AND OCEAN POUT SMALL AM AREAS

Point	N. Latitude	W. Longitude
NWS1	41°10′	67°40′
NWS2	41°10′	67°20′
NWS3	41°00′	67°20′
NWS4	41°00′	67°00′
NWS5	40°50′	67°00′
NWS6	40°50′	67°40′

NORTHERN WINDOWPANE FLOUNDER AND OCEAN POUT LARGE AM AREAS

Point	N. Latitude	W. Longitude
NWL1	42°10′	67°40′
NWL2	42°10′	67°20′
NWL3	41°00′	67°20′
NWL4	41°00′	67°00′
NWL5	40°50′	67°00′
NWL6	40°50′	67°40′

SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT SMALL AM AREAS

Point	N. Latitude	W. Longitude
SWS1	41°10′	71°30′
SWS2	41°10′	71°20′
SWS3	40°50′	71°20′
SWS4	50°50′	71°30′

SOUTHERN WINDOWPANE FLOUNDER AND OCEAN POUT LARGE AM AREAS

Point	N. Latitude	W. Longitude
SWL1	41°10′	71°50′
SWL2	41°10′	71°10′
SWL3	41°00′	71°10′
SWL4	41°00′	71°20′
SWL5	40°50′	71°20′
SWL6	40°50′	71°50′

Point	N. Latitude	W. Longitude
SWL1	NY Coast	73°30′
SWL2	40°30′	73°30′
SWL3	40°30′	73°50′
SWL4	40°20′	73°50′
SWL5	NJ Coast	73°50′
SWL6	NY Coast	73°50′

(*2*) *Atlantic halibut.* If NMFS determines the overall ACL is exceeded for Atlantic halibut, any vessel issued a limited access NE multispecies permit, an open access NE multispecies Handgear B permit, an open access NE

multispecies Category K permit, or a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions, may not fish for, possess, or land Atlantic halibut for the fishing year in which the AM is implemented as specified in paragraph (a)(5)(i)(D) of this section.

(E) *AMs for SNE/MA winter flounder and Atlantic wolffish.* A vessel issued a limited access NE multispecies permit, an open access NE multispecies Handgear B permit, an open access NE multispecies charter/party permit, or a limited access monkfish permit and fishing under the monkfish Category C or D permit provisions may not fish for, possess, or land SNE/MA winter flounder, as specified in § 648.86(l), as a proactive AM to prevent the overall ACL for these stocks from being exceeded.

* * * * *

(iv) *AMs if the sub-ACL for the Atlantic sea scallop fishery is exceeded.* At the end of the scallop fishing year, NMFS shall evaluate Atlantic sea scallop fishery catch to determine whether a scallop fishery sub-ACL has been exceeded. On January 15, or when information is available to make an accurate projection, NMFS will also determine whether the overall ACL for each stock allocated to the scallop fishery has been exceeded. When evaluating whether the overall ACL has been exceeded, NMFS will add the maximum carryover available to sectors, as specified at § 648.87(b)(1)(i)(C), to the estimate of total catch for the pertinent stock. If catch by scallop vessels exceeds the pertinent sub-ACL specified in paragraph (a)(4)(iii)(C) of this section by 50 percent or more, or if scallop catch exceeds the scallop fishery sub-ACL and the overall ACL for that stock is also exceeded, then the applicable scallop fishery AM shall take effect, as specified in § 648.64 of the Atlantic sea scallop regulations.

* * * * *

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Notices

Federal Register

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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

March 22, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *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 within 30 days of this notification. 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.

Foreign Agricultural Service

Title: Export Assistance Programs.

OMB Control Number: 0551–0031.

Summary of Collection: The Office of Trade Program (OTP) provides vital services within the Foreign Agricultural Service (FAS) of the U.S. Department of Agriculture. It facilitates trade contacts between U.S. exporters and foreign buyers seeking U.S. food and agricultural products. All of the assistance offered is designed to promote U.S. agricultural exports by helping American exporters make contact with export agents, trading companies, importers, and foreign buyers, thus creating opportunities to sell their products in overseas markets. The specific programs covered by this request for OMB information collection authority are: U.S. Suppliers List, Buyer Alert, Trade Shows, Foreign Buyers List, Export Directory of U.S. Food Distribution Companies, and the Madigan Award. The authority for these program falls under 7 U.S.C. Part 1761, 7 U.S.C. Part 5693 and 7 U.S.C. Part 1765b. FAS will collect information using a combination of forms and telephone interviews.

Need and Use of the Information: FAS will collect information on contact names, mailing addresses, telephones, fax, email, and Web sites. The main purpose for collecting the information is to foster trade contacts in an effort to facilitate greater export of U.S. agriculture food, forestry, and fishery products. The databases are used to recruit U.S. exporters, importers, and buyers to participate in market development activities sponsored by USDA. These databases must be updated periodically to maintain the integrity and usefulness to the trade community.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1,500.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 693.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–7327 Filed 3–26–12; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 21, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *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 within 30 days of this notification. 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.

Food and Nutrition Service

Title: National Universal Product Code (NUPC) Database.

OMB Control Number: 0584–0552.

Summary of Collection: The Healthy, Hunger-Free Kids Act of 2010 directs the Secretary of Agriculture to establish

a National Universal Product Code (NUPC) database to be used by all Women, Infants, and Children (WIC) State agencies as they implement Electronic Benefit Transfer (EBT) statewide, which is a requirement of the law. As a result of this legislation, the Food and Nutrition Service (FNS) has adopted a plan to expand the number of data elements contained in the existing NUPC database while simultaneously reducing the burden of manual data entry currently borne by WIC State agency employees tasked with populating the database.

Need and Use of the Information: The NUPC database will provide all State agencies with access to a central repository containing comprehensive information about authorized WIC foods. State agencies are expected to use the NUPC database to create an initial list of authorized foods eligible for redemption by WIC Program participants. State agencies may use the NUPC database to maintain their list of authorized foods and to create an Authorized Product List for distribution to Authorized Vendors operating in the EBT environment.

Description of Respondents: State, Local, or Tribal Government; Business or other for-profit.

Number of Respondents: 182.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 565.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–7328 Filed 3–26–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on the following information collections for which the Agency intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by May 29, 2012.

FOR FURTHER INFORMATION CONTACT: Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave. SW., STOP 1522, Room 5162, South Building, Washington, DC 20250–1522. Telephone: (202) 690–1078. Fax: (202) 720- 8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collections that USDA Rural Development is submitting to OMB for extension.

Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of 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 information on respondents, 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 Michele Brooks, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave. SW., Washington, DC 20250–1522. Fax: (202) 720–8435.

Title: Borrower Investments—Telecommunications Loan Program, 7 CFR 1744, Subpart E.

OMB Control Number: 0572–0098.

Type of Request: Extension of a currently approved collection.

Abstract: The Rural Economic Development Act of 1990, Title XXIII of the Farm Bill, Public Law 101–624, authorized qualified Rural Utilities Service borrowers to make investments in rural development projects without the prior approval of the Agency's Administrator provided, however, that such investments do not cause the borrower to exceed its allowable qualified investment level as determined in accordance with the procedures set forth in 7 CFR part 1744, subpart E. When a borrower exceeds these limits, the security for the Government's loans could be in jeopardy. However, in the interest of encouraging rural development, RUS will consider approving such investments that exceed a borrower's qualified investment level. This information collection covers those items that a borrower would need to submit to RUS for consideration of the borrower's request to make such an investment.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Not for profit institutions; business or other for-profit entities.

Estimated Number of Respondents: 2.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1 hour.

Dated: March 20, 2012.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2012–7264 Filed 3–26–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: The American Community Survey.

OMB Control Number: 0607–0810.

Form Number(s): Various.

Type of Request: Revision of a currently approved collection.

Burden Hours: 2,455,868.

Number of Respondents: 3,760,000.

Average Hours per Response: The ACS Household questionnaire takes 40 minutes on average to complete.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) for revisions to the American Community Survey (ACS). The Census Bureau has developed a methodology to collect and update every year demographic, social, economic, and housing data that are essentially the same as the ''long-form'' data that the Census Bureau traditionally has collected once a decade as part of the decennial census. Federal and state government agencies use such data to

evaluate and manage federal programs and to distribute funding for various programs that include food stamp benefits, transportation dollars, and housing grants. State, county, and community governments, nonprofit organizations, businesses, and the general public use information like housing quality, income distribution, journey-to-work patterns, immigration data, and regional age distributions for decision-making and program evaluation.

Using the Master Address File (MAF) from the decennial census, that is updated each year, we will select a sample of addresses, mail survey forms each month to a new group of potential households, and attempt to conduct interviews over the telephone with households that have not responded. Upon completion of the telephone follow-up, we will select a sub-sample of the remaining households, which have not responded, typically at a rate of one in three, to designate a household for a personal interview. We will also conduct interviews with a sample of residents at a sample of group quarters (GQ) facilities. Collecting these data from a new sample of housing unit (HU) and GQ facilities every month provides more timely data and lessened respondent burden in the Decennial Census.

We release a yearly microdata file, similar to the Public Use Microdata Sample file of the Census 2000 long-form records. In addition, we produce total population summary tabulations similar to the Census 2000 tabulations down to the block group level. The microdata files, tabulated files, and their associated documentation are available through the Internet.

Historically the ACS has employed a tri-modal data collection strategy for household data collection—mail, telephone and personal visit. In 2011 the Census Bureau conducted two tests to assess the feasibility of providing an Internet response option to households that receive survey materials by mail. These tests evaluated various methods for providing an Internet response option. Based on the results of these tests, the ACS will add an Internet response option in 2013. If during the course of our preparation activities in 2012 to implement an Internet response option in 2013 we encounter challenges that might delay the Internet implementation after the start of 2013, we may consider continuing the current 2012 mail strategy into early 2013 with the incorporation of the 2013 content changes described later in this document. If the Census Bureau decides to pursue this as a contingency, we will submit a non-substantive change request for OMB approval which would include the modified mail materials. Based on concerns with the results of the 2011 testing in Puerto Rico, we will be delaying the implementation of an Internet response option there until a later date while we assess better alternatives.

For the 2013 ACS, we will use modified data collection materials based upon results of the 2010 ACS Content Test. The content of the proposed 2013 ACS questionnaire and data collection instruments for both HU and GQ operations reflect changes to content, instructions, and forms design that were tested in 2010.

The 2010 ACS Content Test resulted in recommendations to OMB to modify five (one housing and four population) question series on the ACS. The modified housing question is the food stamp question, which at the request of the Food and Nutrition Service is being revised to incorporate the program name change to the Supplemental Nutrition Assistance Program (SNAP). The new version will be used in all collection modes. The modified population questions are: veteran status and period of service, and property income and wages. The Census Bureau revised the property income and wage questions to improve response by breaking up these questions into shorter pieces to improve comprehension when the questions are asked by an interviewer. This change will be incorporated into the interviewer-administered modes only. At the request of the Department of Veteran Affairs, the Census Bureau revised the veteran status and period of service questions to simplify the reporting categories. The new version will be used by all collection modes.

The Census Bureau proposes including two new subjects on the ACS: computer and Internet usage and parental place of birth. As authorized by the Broadband Data Improvement Act of 2008, the Federal Communications Commission sponsored the computer and Internet usage topic; it is comprised of three questions with a mix of fixed choice and open-ended responses. The Census Bureau sponsored the parental place of birth topic; it includes two open-ended questions.

The Census Bureau believes there is added value in collecting information about parental place of birth, though some may feel that this topic is somewhat duplicative when collected in connection with existing survey questions on race, Hispanic origin, and ancestry. Adding the parental place of birth questions to the questionnaire in 2013 would be done as part of a multi-year process to further examine the relationship of the data for these topics. The ACS data would also be evaluated in connection with results from the 2010 Census Alternative Questionnaire Experiment, and this combined research would be used in determining recommendations for which questions would remain on the ACS at the conclusion of this process. The Census Bureau plans to provide various opportunities for public comment as well as dialogue with groups that are especially interested in these data as we refine the plans and share results on this cross-topical research.

There is one proposed change that would be unique to the Puerto Rico Community Survey (PRCS) that was not tested during the 2010 ACS Content Test. Concerns with data for Puerto Rico related to the changes implemented to the plumbing questions in 2008 led to further investigation of how these questions were being interpreted in Puerto Rico. Cognitive testing conducted with Puerto Rico residents confirmed that confusion was common related to how to respond to the question ''Does this house, apartment or mobile home have hot and cold running water?'' because it is common for housing units in Puerto Rico to not have a water heater. After discussions with the Puerto Rico Planning Board, the Census Bureau proposes modifying the PRCS version of this question by replacing it with two separate questions: ''Does this house, apartment or mobile home have running water?'' and ''Does this house, apartment or mobile home have a water heater?''

Affected Public: Individuals or households.

Frequency: The ACS is an ongoing survey conducted monthly. Respondents are asked to provide a one-time response.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 141, 193, and 221.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230, (or via the Internet at *jjessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or email (*bharrisk@omb.eop.gov*).

Dated: March 22, 2012.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–7332 Filed 3–26–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

[Docket No. 111115679–2197–02]

Privacy Act System of Records

AGENCY: U.S. Census Bureau, Department of Commerce.

ACTION: Notice of amended Privacy Act System of Records: COMMERCE/CENSUS–4, Economic Survey Collection.

SUMMARY: In order to update the system of records the Department of Commerce publishes this notice to announce the effective date of a Privacy Act System of Records notice titled, ''COMMERCE/CENSUS–4, Economic Survey Collection.'' The notice of proposed amendment to this system or records was published in the **Federal Register** on January 26, 2012 (77 FR 4004).

DATES: The system of records becomes effective on March 27, 2012.

ADDRESSES: For a copy of the system of records please mail requests to: Chief Privacy Officer, Privacy Office, Room HQ–8H115, U.S. Census Bureau, Washington, DC 20233–3700.

FOR FURTHER INFORMATION CONTACT: Chief Privacy Officer, Privacy Office, Room HQ–8H115, U.S. Census Bureau, Washington, DC 20233–3700, 301–763–6560.

SUPPLEMENTARY INFORMATION: On January 26, 2012, the Department of Commerce published and requested comments on proposed amendments to the Privacy Act System of Records titled, ''COMMERCE/CENSUS–4, Economic Survey Collection.'' The amendment serves to generally update the system of records by updating the name and purpose of the system, updating categories of individuals in the system, updating categories of records in the system, updating routine uses, and updating safeguards. No comments were received in response to the request for comments. By this notice, the Department notifies the public that it adopts the proposed system as final without changes effective March 27, 2012.

Dated: Macrh 21, 2012.

Jonathan R. Cantor,

Chief Privacy Officer, U.S. Department of Commerce.

[FR Doc. 2012–7297 Filed 3–26–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

[Docket No. 111115680–2197–02]

Privacy Act System of Records

AGENCY: U.S. Census Bureau, Department of Commerce.

ACTION: Notice of amended Privacy Act System of Records: COMMERCE/CENSUS–6, Population Census Records for 1910 and All Subsequent Decennial Censuses.

SUMMARY: In order to update the system of records the Department of Commerce publishes this notice to announce the effective date of an amended Privacy Act System of Records titled, ''COMMERCE/CENSUS–6, Population Census Records for 1910 and All Subsequent Decennial Censuses.'' The notice of proposed amendment to this system of records was published in the **Federal Register** on January 26, 2012 (77 FR 4000).

ADDRESSES: For a copy of the system of records please mail requests to: Chief Privacy Officer, Privacy Office, Room HQ–8H115, U.S. Census Bureau, Washington, DC 20233–3700.

FOR FURTHER INFORMATION CONTACT: Chief Privacy Officer, Privacy Office, Room HQ–8H115, U.S. Census Bureau, Washington, DC 20233–3700, 301–763–6560.

SUPPLEMENTARY INFORMATION: On January 26, 2012, the Department of Commerce published and requested comments on proposed amendments to the Privacy Act System of Records titled, ''COMMERCE/CENSUS–6, Population Census Records for 1910 and All Subsequent Decennial Censuses.'' The amendment serves to generally update the system of records by updating certain provisions concerning the safeguards for records in the system, updating system manager information, and address and minor administrative updates. No comments were received in response to the request for comments. By this notice, the Department informs the public that it adopts the proposed system as final without changes effective March 27, 2012.

Dated: March 21, 2012.

Jonathan R. Cantor,

Chief Privacy Officer, U.S. Department of Commerce.

[FR Doc. 2012–7301 Filed 3–26–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

[Docket No. 111115678–2197–02]

Privacy Act System of Records

AGENCY: U.S. Census Bureau, Department of Commerce.

ACTION: Notice of amended Privacy Act System of Records: COMMERCE/CENSUS–3, Special Censuses, Surveys, and Other Studies.

SUMMARY: In order to update the system of records the Department of Commerce publishes this notice to announce the effective date of an amended Privacy Act System of Records titled ''COMMERCE/CENSUS–3, Individual and Household Statistical Surveys and Special Studies Records.'' The notice of proposed amendment to this system of records was published in the **Federal Register** on January 26, 2012 (77 FR 4002).

DATES: The system of records becomes effective on March 27, 2012.

ADDRESSES: For a copy of the system of records please mail requests to: Chief Privacy Officer, Privacy Office, Room HQ–8H115, U.S. Census Bureau, Washington, DC 20233–3700.

FOR FURTHER INFORMATION CONTACT: Chief Privacy Officer, Privacy Office, Room HQ–8H115, U.S. Census Bureau, Washington, DC 20233–3700, 301–763–6560.

SUPPLEMENTARY INFORMATION: On January 26, 2012, the Department of Commerce published and requested comments on proposed amendments to the Privacy Act System of Records titled, ''COMMERCE/CENSUS–3, Individual and Household Statistical Surveys and Special Studies Records.'' Upon amendment, the system will be titled, ''COMMERCE/CENSUS–3, Special Censuses, Surveys, and Other Studies.'' The amendment serves to generally update the system of records by updating the purpose of the system, updating categories of individuals in the system, updating categories of records in the system, and updating policies and practices for storing, retaining, disposing, and safeguarding the records in the system. No comments were received in response to the request for comments. This notice informs the public that the Department is adopting the proposed system as final without changes, effective March 27, 2012.

Dated: March 21, 2012.

Jonathan R. Cantor,

Chief Privacy Officer, U.S. Department of Commerce.

[FR Doc. 2012–7302 Filed 3–26–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–837]

Polyethylene Terephthalate Film, Sheet, and Strip (PET Film) From Taiwan: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 27, 2012.

FOR FURTHER INFORMATION CONTACT: Gene Calvert or Jun Jack Zhao, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3586 or (202) 482–1396, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 2011, the Department of Commerce (the Department) initiated the administrative review regarding the antidumping duty order on PET Film from Taiwan covering the period July 1, 2010 through June 30, 2011. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 53404 (August 26, 2011). This review covers two producers and/or exporters of the subject merchandise to the United States: Nan Ya Plastics Corporation, Ltd. (Nan Ya), and Shinkong Synthetic Fibers Corporation (Shinkong). The current deadline for the preliminary results of review is April 1, 2012.

Extension of Time for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines that it is not practicable to complete the review within the foregoing time period.

The Department finds that it is not practicable to complete the preliminary results of the administrative review of PET Film from Taiwan within this time limit. The Department requires additional time to evaluate the questionnaire responses from Nan Ya and Shinkong in order to conduct a thorough analysis of all information on the record, including possible cost and affiliation issues. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for the completion of the preliminary results of this review from 245 days to 365 days; *i.e.,* from April 1, 2012, until July 30, 2012.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 771(i)(1) of the Act.

Dated: March 21, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–7342 Filed 3–26–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Second Extension of the Time Limit for the Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: March 27, 2012.

FOR FURTHER INFORMATION CONTACT: Rebecca Pandolph, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–3627.

SUPPLEMENTARY INFORMATION: On February 28, 2011, the Department of Commerce (''Department'') published a notice of initiation of an administrative review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China covering the period January 1, 2010, through December 31, 2010.[1] On October 24, 2011, the Department published its preliminary results of the administrative review.[2] On February 17, 2012, the Department extended the time period for completing the final results of the instant administrative review.[3] The final results of the administrative review are currently due no later than March 22, 2012.

Statutory Time Limits

In antidumping duty administrative reviews, section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to make a final determination in an administrative review of an antidumping duty order within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the 120 day period to 180 days after publication of the preliminary results (or 300 days if the Department has not extended the time limit for the preliminary results).

Extension of Time Limit for Final Results

The Department has determined that it is not practicable to complete the review within the current deadline because it continues to require additional time to evaluate the arguments and submissions made by interested parties following the *Preliminary Results.* Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completing the final results of the instant administrative review until August 19, 2012. Because August 19, 2012 falls on a weekend, the final results are now due no later than August 20, 2012.[4]

This notice is published pursuant to sections 751(a)(3)(A) and 777(i) of the Act.

Dated: March 22, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–7350 Filed 3–26–12; 8:45 am]

BILLING CODE 3510–DS–P

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[1] *See Initiation of Administrative Review of the Antidumping Duty Order on Wooden Bedroom Furniture From the People's Republic of China, 76 FR 10880 (February 28, 2011).*

[2] *See Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Review in Part,* 76 FR 65684 (October 24, 2011) (''*Preliminary Results*'').

[3] *See Wooden Bedroom Furniture from the People's Republic of China: Extension of Time for the Final Results of the Antidumping Dumping Duty Administrative Review,* 77 FR 9623 (February 17, 2012).

[4] *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1920, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–983]

Drawn Stainless Steel Sinks From the People's Republic of China: Initiation of Antidumping Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 27, 2012.

FOR FURTHER INFORMATION CONTACT: Frances Veith or Eve Wang at (202) 482–4295 or (202) 482–6231, respectively, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petition

On March 1, 2012, the Department of Commerce (''Department'') received an antidumping duty (''AD'') petition (hereafter, ''Petition'') concerning imports of drawn stainless steel sinks from the People's Republic of China (''PRC'') filed in proper form on behalf of Elkay Manufacturing Company (''Petitioner'').[1] On March 6, 2012, the Department issued a request for additional information and clarification of certain areas of the Petition. On March 9, 2012, Petitioner filed a response with respect to general questions about information in the Petition (''General Issues Supplement''). On March 9, 2012, Petitioner also filed responses specific to the AD Petition (''Supplement to AD Petition''). On March 15, 2012, Petitioner also filed a revision to the proposed scope language.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the ''Act''), Petitioner alleges that imports of drawn stainless steel sinks from the PRC are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to Petitioner supporting its allegations.

The Department finds that the Petition was filed on behalf of the domestic industry because Petitioner is an interested party as defined in section 771(9)(C) of the Act. The Department also finds that Petitioner has demonstrated sufficient industry support with respect to the antidumping duty investigation that Petitioner is requesting that the Department initiate (*see* ''Determination of Industry Support for the Petition'' section below).

Period of Investigation

The period of investigation (''POI'') is July 1, 2011, through December 31, 2011.[2]

Scope of the Investigation

The product covered by this investigation is drawn stainless steel sinks from the PRC. For a full description of the scope of the Investigation, please *see* the ''Scope of the Investigation,'' in Appendix I of this notice.

Comments on Scope of the Investigation

During our review of the Petition, we discussed the scope with Petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations. The Department encourages all interested parties to submit such comments by April 10, 2012, twenty calendar days from the signature date of this notice. All comments must be filed on the records of both the PRC antidumping and countervailing duty investigations. Comments should be filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the APO/Dockets Unit in Room 1870 and stamped with the date and time of receipt by the deadline noted above.

Comments on Product Characteristics for Antidumping Questionnaires

We are requesting comments from interested parties regarding the appropriate physical characteristics of drawn stainless steel sinks to be reported in response to the Department's antidumping questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to more accurately report the relevant factors and costs of production, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as (1) general product characteristics and (2) the product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe drawn stainless steel sinks, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in product matching. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the antidumping questionnaires, we must receive comments by April 10, 2012. Additionally, rebuttal comments must be received by April 17, 2012. All comments and submissions to the Department must be filed electronically using IA ACCESS, as referenced above.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the

[1] *See* ''Petitions for the Imposition of Antidumping Duties And Countervailing Duties Against Drawn Stainless Steel Sinks From The People's Republic of China,'' filed on March 1, 2012 (''Petition'').

[2] *See* 19 CFR 351.204(b)(1).

domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[3] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[4]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that drawn stainless steel sinks constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Drawn Stainless Steel Sinks from the PRC (''AD Initiation Checklist'') at Attachment II dated concurrently with this notice and on file electronically via IA ACCESS. Access to documents filed via IA ACCESS is also available in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building.

In determining whether Petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in Appendix I of this notice. To establish industry support, Petitioner provided its own 2011 production of the domestic like product, and compared this to the total production of the domestic like product for the entire domestic industry.[5]

Our review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that Petitioner has established industry support.[6] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling).[7] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[8] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[9] Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the antidumping duty investigation that it is requesting the Department initiate.[10]

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (''NV''). In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act. Petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price depression or suppression; decline in financial performance; lost sales and revenue; and production, capacity, capacity utilization, shipment, and employment data.[11] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.[12]

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation of imports of drawn stainless steel sinks from the PRC. The sources of data for the deductions and adjustments relating to the U.S. price and the factors of production (''FOPs'') are also discussed in the initiation checklists.[13]

Export Price

Petitioner calculated export price (''EP'') based on price quotes of certain drawn stainless steel sinks obtained from Chinese producers, as identified in affidavits regarding price offers and U.S.

[3] *See* section 771(10) of the Act.

[4] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988)), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

[5] *See* Volume I of the Petition at 3 and Exhibit I–1, and General Issues Supplement at 4; *see also* AD Initiation Checklist at Attachment II.

[6] *See* AD Initiation Checklist at Attachment II.

[7] *See* section 732(c)(4)(D) of the Act; *see also* AD Initiation Checklist at Attachment II.

[8] *See* AD Initiation Checklist at Attachment II.

[9] *See id.*

[10] *See id.*

[11] *See* Volume I of the Petition, at 8–25 and Exhibits I–4 through I–32, and General Issues Supplement, at 4.

[12] *See* AD Initiation Checklist, at Attachment III.

[13] *See* AD Initiation Checklist at 5.

price.[14] Based on the price quotes and delivery terms, Petitioner deducted from these prices the charges and expenses associated with exporting and delivering the product to the U.S. customer (brokerage and handling and domestic inland freight).[15] Petitioner made no other adjustments.[16]

Normal Value

Petitioner states that the Department has long treated the PRC as a non-market economy (''NME'') country and this designation remains in effect today.[17] In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of the PRC investigation. Accordingly, the NV of the product for the PRC investigation is appropriately based on FOPs valued in a surrogate market-economy (''ME'') country in accordance with section 773(c) of the Act. In the course of the investigation, all parties will have the opportunity to provide relevant information related to the issue of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioner claims that Thailand is an appropriate surrogate country under 19 CFR 351.408(a) because it is an ME country that is at a comparable level of economic development to the PRC and surrogate values data from Thailand are available and reliable. Petitioner also believes that Thailand is a significant producer of comparable merchandise. Based on the information provided by Petitioner, we believe that it is appropriate to use Thailand as a surrogate country for initiation purposes. In the course of the investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 40 days after the date of publication of the preliminary determination.

Petitioner calculated the NV and dumping margins for the U.S. price, as discussed above, using the Department's NME methodology as required by section 773(c) of the Act, 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Petitioner calculated NV based on its own consumption rates.[18] Petitioner asserts that, to the best of Petitioner's knowledge, these consumption rates are very similar to the consumption rates of the PRC producers.[19]

Petitioner valued by-products and most FOPs based on reasonably available, public surrogate country data, specifically, Thai import statistics from the Global Trade Atlas (''GTA'').[20] Petitioner excluded from these import statistics values from countries previously determined by the Department to be NME countries, and from India, Indonesia, and the Republic of Korea, as the Department has previously excluded prices from these countries because they maintain broadly available, non-industry-specific export subsidies. Finally, the import statistics average unit value excludes imports that were labeled as originating from an ''unspecified'' country, because the Department could not be certain that they were not from either an NME country or a country with generally available export subsidies.[21] For valuing other FOPs, Petitioner used sources selected by the Department in recent proceedings involving the PRC or publicly available sources from Thailand.[22] In addition, Petitioner made Thai Baht/U.S. dollar (''USD'') currency conversions. The Department recalculated average exchange rates for the POI, based on Federal Reserve exchange rates, to use data for all months of the POI.[23]

Petitioner determined labor costs using the labor consumption rates derived from a U.S. producer.[24] Petitioner valued labor costs using Thai wage rates for manufacturing industries, as reported by the International Labor Organization (''ILO'') in Table 6A of its *Yearbook of Labor Statistics.*[25] Petitioner inflated the wage rate to be contemporaneous with the POI using the International Financial Statistics' consumer price index inflators, consistent with the Department's practice.[26]

Petitioner used information published by the ''Board of Investment of Thailand'' (''BOI''), available on the Government of Thailand's official Web site, to value electricity and water.[27] Since the water rates are not contemporaneous with the POI, Petitioner used Thai CPI as the inflating factor. However, Petitioner inadvertently calculated a deflator when they meant to calculate an inflator. We recalculated the inflator for water and revised the margin calculation, where appropriate.[28]

Petitioner determined natural gas costs using Indian gas prices from the Indian Gas Utility Gail and substantiated these prices by Chemical Weekly in February 2005.[29]

Petitioner based factory overhead, selling, general and administrative expenses (''SG&A''), and profit on data from the financial statements of Siam Stainless Steel Co., Ltd. (''Siam'') and Green Power Engineering Co., Ltd. (''Green Power''), both of which Petitioner asserts are Thai producers of comparable merchandise.[30] We determined that Siam's statements best reflect the U.S. producer's production experience. In our examination of Green Power's financial statements, we found no indication that Green Power produced merchandise comparable to the merchandise under investigation.[31] Therefore, for purposes of initiation, we have relied solely on the financial statements of Siam to calculate factory overhead, selling, SG&A, and profit.[32]

Petitioner determined packing material costs using the consumption

[14] *See* AD Initiation Checklist at 6; *see also* Supplement to AD Petition at 7–8 and Exhibit II–S9.

[15] *See* AD Initiation Checklist at 5–6; *see also* Volume II of the Petition at 10 and Exhibits II–4; *see also* Supplement to AD Petition at 4–6 and Exhibits II–S1, II–S2, II–S3, II–S5 and II–S6.

[16] *See* AD Initiation Checklist at 6 for additional details.

[17] *See* Volume II of the Petition at I–2; *see also Utility Scale Wind Towers From the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations,* 77 FR 3440 (January 24, 2012).

[18] *See* Volume II of the Petition at 4.

[19] *See id.*

[20] *See* Volume II of the Petition at 6–8 and Exhibit II–5; *see also* Supplement to AD Petition at 2–3.

[21] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039 (September 24, 2008); *see also* Volume II of the Petition at Exhibit II–5.

[22] *See* Volume II of the Petition at 5–8 and Exhibits II–4, II–6–7, II–10–12, II–15 and II–17; *see also* Supplement to AD Petition at Exhibit II–S6.

[23] *See* Volume II of the Petition at Exhibit II–9; *see also* AD Initiation Checklist at Attachment V.

[24] *See* Volume II of the Petition at 6 and Exhibit II–2 and II–6; *see also* Supplement to AD Petition at Exhibit II–S8.

[25] *See* AD Initiation Checklist at 7.

[26] *See id.*

[27] *See* AD Initiation Checklist at 8.

[28] *See* Supplement to the PRC AD Petition at 7 and Exhibit II–S3. *See* also AD Initiation Checklist at 8.

[29] For purposes of this Petition, the Petitioner conservatively relied on the Gail India rate because it is not aware of any case where the Department specified a Thai industrial natural gas rate for surrogate value purposes. *See* Volume II of the Petition at 7 and Exhibit II–12. *See* also AD Initiation Checklist at 8

[30] *See* Volume II of the Petition at II–13 and Supplement to AD Petition at 3–4; see also AD Initiation Checklist at Attachment V.

[31] See Supplement to the PRC AD Petition at 4.

[32] *See* 19 CFR 351.408(4).

rates derived from U.S. producer's experience, adjusted to reflect certain differences between U.S. and Chinese packing structures.[33] Petitioner valued packing materials using GTA Thai import statistics.[34]

Fair Value Comparisons

Based on the data provided by Petitioner, there is reason to believe that imports of drawn stainless steel sinks from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of EPs and NV calculated, in accordance with section 773(c) of the Act, the estimated dumping margins for drawn stainless steel sinks from the PRC range from 22.81 percent to 76.53 percent.[35]

Initiation of Antidumping Investigation

Based upon the examination of the Petition on drawn stainless steel sinks from the PRC, the Department finds that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping investigation to determine whether imports of drawn stainless steel sinks from the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Targeted Dumping Allegations

On December 10, 2008, the Department issued an interim final rule for the purpose of withdrawing 19 CFR 351.414(f) and (g), the regulatory provisions governing the targeted dumping analysis in antidumping duty investigations, and the corresponding regulation governing the deadline for targeted dumping allegations, 19 CFR 351.301(d)(5).[36] The Department stated that ''{w}ithdrawal will allow the Department to exercise the discretion intended by the statute and, thereby, develop a practice that will allow interested parties to pursue all statutory avenues of relief in this area.'' [37]

In order to accomplish this objective, if any interested party wishes to make a targeted dumping allegation in either of these investigations pursuant to section 777A(d)(1)(B) of the Act, such allegations are due no later than 45 days before the scheduled date of the preliminary determination.

Respondent Selection and Quantity and Value Questionnaire

The Department will request quantity and value information from all known exporters and producers identified with complete contact information in the Petition.[38] The quantity and value data received from Chinese exporters/producers will be used as the basis for selecting the mandatory respondents. The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines, as discussed below and in the Separate Rate section, in order to receive consideration for separate-rate status.[39]

In addition, the Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration Web site (*http://ia.ita.doc.gov/ia-highlights-and-news.html*). Exporters and producers of drawn stainless steel sinks that do not receive quantity and value questionnaires but intend to submit a response can obtain a copy from the Import Administration Web site. The quantity and value questionnaire must be submitted by all Chinese exporters/producers no later than April 11, 2012, 21 days after the signature date of this **Federal Register** notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's Web site at *http://ia.ita.doc.gov/apo*.

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate status application.[40] The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's Web site at *http://trade.gov/ia/ia-highlights-and-news.html* on the date of publication of this initiation notice in the **Federal Register**. The separate-rate application will be due 60 days after publication of this initiation notice. For exporters and producers who submit a separate-rate status application and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for consideration for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents. As noted in the ''Respondent Selection'' section above, the Department requires that the PRC respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. The quantity and value questionnaire will be available on the Department's Web site at *http://trade.gov/ia-highlights-and-news.html* on the date of the publication of this initiation notice in the **Federal Register**.

Use of Combination Rates

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Separate Rates and Combination Rates Bulletin states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[41]

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the representatives of the Chinese Government. Because of the particularly large number of producers/exporters identified in the Petition, the

[33] *See* Volume II of the Petition at 8 and Exhibit II–2; *see also* Supplement to AD Petition at Exhibit II–S8.

[34] *See* Volume II of the Petition at Exhibit II–5.

[35] *See* AD Initiation Checklist at 9 and Attachment V.

[36] *See Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigation,* 73 FR 74930 (December 10, 2008).

[37] *See id.,* 73 FR at 74931.

[38] *See* General Issues Supplement.

[39] *See, e.g., Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 73 FR 10221, 10225 (February 26, 2008); *see also Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China,* 70 FR 21996, 21999 (April 28, 2005).

[40] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005) (''Separate Rates and Combination Rates Bulletin''), available on the Department's Web site at *http://trade.gov/ia/policy/bull05-1.pdf.*

[41] *See* Separate Rates and Combination Rates Bulletin, at 6 (emphasis added).

Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by the delivery of the public version of the Petition to the PRC Government, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, no later than April 16, 2012, whether there is a reasonable indication that imports of drawn stainless steel sinks from the PRC are materially injuring, or threatening material injury to a U.S. industry. A negative ITC determination with respect to any country will result in the investigation being terminated for that country; otherwise, this investigation will proceed according to statutory and regulatory time limits.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information.[42] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any AD/CVD proceeding initiated on or after March 14, 2011.[43] The formats for the revised certifications are provided at the end of the *Interim Final Rule* and the *Supplemental Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: March 21, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigation

The products covered by the scope of these investigations are stainless steel sinks with single or multiple drawn bowls, with or without drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel (''Drawn Stainless Steel Sinks''). Mounting clips, fasteners, seals, and sound-deadening pads are also covered by the scope of these investigations if they are included within the sales price of the Drawn Stainless Steel Sinks.[44] For purposes of this scope definition, the term ''drawn'' refers to a manufacturing process using metal forming technology to produce a smooth basin with seamless, smooth, and rounded corners. Drawn Stainless Steel Sinks are available in various shapes and configurations and may be described in a number of ways including flush mount, top mount, or undermount (to indicate the attachment relative to the countertop). Stainless steel sinks with multiple drawn bowls that are joined through a welding operation to form one unit are covered by the scope of the investigations. Drawn Stainless Steel Sinks are covered by the scope of the investigations whether or not they are sold in conjunction with non-subject accessories such as faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories.

Excluded from the scope of the investigations are stainless steel sinks with fabricated bowls. Fabricated bowls do not have seamless corners, but rather are made by notching and bending the stainless steel, and then welding and finishing the vertical corners to form the bowls. Stainless steel sinks with fabricated bowls may sometimes be referred to as ''zero radius'' or ''near zero radius'' sinks.

The products covered by these investigations are currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under statistical reporting number 7324.10.0000. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the products under investigation is dispositive of its inclusion as subject merchandise.

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[42] *See* section 782(b) of the Act.

[43] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule*'') (amending 19 CFR 351.303(g)(1) & (2)), as supplemented by *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011) (''*Supplemental Interim Final Rule*'').

[44] Mounting clips, fasteners, seals, and sound-deadening pads are not covered by the scope of these investigations if they are not included within the sales price of the Drawn Stainless Steel Sinks, regardless of whether they are shipped with or entered with Drawn Stainless Steel Sinks.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–984]

Drawn Stainless Steel Sinks From the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 27, 2012.

FOR FURTHER INFORMATION CONTACT: Shane Subler and Hermes Pinilla, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0189 and (202) 482–3477, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On March 1, 2012, the Department of Commerce (''Department'') received a countervailing duty (''CVD'') petition concerning imports of drawn stainless steel sinks from the People's Republic of China (''PRC'') filed in proper form by Elkay Manufacturing Company (''Petitioner''). *See* Petition for the Imposition of Antidumping and Countervailing Duties Against Drawn Stainless Steel Sinks from the People's Republic of China, dated March 1, 2012 (''the Petition''). On March 6 and 7, 2012, the Department issued requests to Petitioner for additional information and for clarification of certain areas of the CVD Petition. Based on the Department's requests, Petitioner filed a supplement to the Petition on March 9, 2012.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (''Act''), Petitioner alleges that producers/exporters of drawn stainless steel sinks from the PRC received countervailable subsidies within the meaning of sections 701 and 771(5) of the Act, and that imports from these producers/exporters materially injure, or threaten material injury to, an industry in the United States.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because Petitioner is an interested party, as defined in section 771(9)(C) of the Act, and has demonstrated sufficient industry support with respect to the investigation that it requests the Department to initiate (*see* ''Determination of Industry Support for the Petition'' below).

Period of Investigation

The period of investigation is January 1, 2011, through December 31, 2011.

Scope of Investigation

The products covered by the scope of this investigation are stainless steel sinks with single or multiple drawn bowls, with or without drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel (''Drawn Stainless Steel Sinks''). Mounting clips, fasteners, seals, and sound-deadening pads are also covered by the scope of the investigation if they are included within the sales price of the Drawn Stainless Steel Sinks.[1] For purposes of this scope definition, the term ''drawn'' refers to a manufacturing process using metal forming technology to produce a smooth basin with seamless, smooth, and rounded corners. Drawn Stainless Steel Sinks are available in various shapes and configurations and may be described in a number of ways including flush mount, top mount, or undermount (to indicate the attachment relative to the countertop). Stainless steel sinks with multiple bowls that are joined through a welding operation to form one unit are covered by the scope of the investigation. Drawn Stainless Steel Sinks are covered by the scope of the investigation whether or not they are sold in conjunction with non-subject accessories such as faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories.

Excluded from the scope of the investigation are stainless steel sinks with fabricated bowls. Fabricated bowls do not have seamless corners, but rather are made by notching and bending the stainless steel, and then welding and finishing the vertical corners to form the bowls. Stainless steel sinks with fabricated bowls may sometimes be referred to as ''zero radius'' or ''near zero radius'' sinks.

The products covered by the investigation are currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under statistical reporting number 7324.10.000. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the products under investigation is dispositive of its inclusion as subject merchandise.

[1] Mounting clips, fasteners, seals, and sound-deadening pads are not covered by the scope of this investigation if they are not included within the sales price of the Drawn Stainless Steel Sinks, regardless of whether they are shipped with or entered with Drawn Stainless Steel Sinks.

Comments on Scope of Investigation

During our review of the Petition, we discussed the scope with Petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. As a result, the ''Scope of Investigation'' language has been modified from the language in the Petition to reflect these clarifications. *See* March 15, 2012 letter from Petitioner regarding Drawn Stainless Steel Sinks from the People's Republic of China: Petitioner's Revision to the Proposed Scope of Investigations.

Moreover, as discussed in the preamble to the regulations (*see Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period of time for interested parties to raise issues regarding product coverage. The Department encourages interested parties to submit such comments by 5 p.m. DST on Tuesday, April 10, 2012, which is twenty calendar days from the signature date of this notice. All comments must be filed on the records of both the PRC antidumping duty investigation as well as the PRC CVD investigation.

Filing Requirements

All submissions to the Department must be filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by the time and date set by the Department. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the deadline noted above.[2]

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, on March 5, 2012, the Department invited representatives of the Government of the PRC (''GOC'') for consultations with respect to the CVD petition. Those consultations were held on March 15, 2012. *See* Ex-Parte Memorandum on Consultations with Officials from the Government of the People's Republic of China on the Countervailing Duty Petition regarding Drawn Stainless Steel Sinks, dated March 19, 2012.

[2] *See http://www.gpo.gov/fdsys/pkg/FR-2011-07-06/pdf/2011-16352.pdf* for details of the Department's Electronic Filing Requirements, which went into effect on August 5, 2011. Information on help using IA ACCESS can be found at *https://iaaccess.trade.gov/help.aspx* and a handbook can be found at *https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf.*

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (Ct.

Int'l Trade 2001), *citing Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (Ct. Int'l Trade 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of the domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that drawn stainless steel sinks constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* ''Countervailing Duty Investigation Initiation Checklist: Drawn Stainless Steel Sinks from the People's Republic of China'' (CVD Initiation Checklist) at Attachment II, dated concurrently with this notice and on file electronically via IA ACCESS. Access to IA ACCESS is available in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building.

In determining whether Petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation'' section of this notice. To establish industry support, Petitioner provided its own 2011 production of the domestic like product, and compared this to the total production of the domestic like product for the entire domestic industry. *See* Volume I of the Petition, at 3 and Exhibit I–1, and General Issues Supplement, at 4; *see also* CVD Initiation Checklist at Attachment II.

Our review of the data provided in the Petition, supplemental submission, and other information readily available to the Department indicates that Petitioner has established industry support. *See* CVD Initiation Checklist at Attachment II. First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling). *See* section 702(c)(4)(D) of the Act; *see also* CVD Initiation Checklist at Attachment II. Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. *See* CVD Initiation Checklist at Attachment II. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. *See id.* Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See id.*

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting the Department initiate. *See id.*

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioner contends that the industry's injured condition is illustrated by reduced market share; underselling and price depression or suppression; decline in financial performance; lost sales and revenue; and production, capacity, capacity utilization, shipment, and employment data. *See* Volume I of the Petition, at 8–25 and Exhibits I–4 through I–32, and General Issues Supplement, at 4. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* CVD Initiation Checklist, at Attachment III.

Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD proceeding whenever an interested party files a petition on behalf of an industry that: (1) Alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioner(s) supporting the allegations. The Department has examined the Petition on drawn stainless steel sinks from the PRC and finds that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a CVD investigation to determine whether manufacturers, producers, or exporters of drawn stainless steel sinks in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see* Initiation Checklist.

We are including in our investigation the following programs alleged in the Petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in the PRC:

A. Grant Programs

1. The State Key Technology Renovation Fund.
2. ''Famous Brands'' Awards.
3. Grants to Cover Legal Fees in Trade Remedy Cases.
4. Special Fund for Energy Saving Technology Reform.
5. The Clean Production Technology Fund.
6. Grants for Listing Shares.
7. Export Assistance Grants.
8. Guangdong Province Science and Technology Bureau Project Fund (aka Guangdong Industry, Research, University Cooperating Fund).
9. Export Rebate for Mechanic, Electronic, and High-tech Products.
10. Funds for Outward Expansion of Industries in Guangdong Province.
11. Fund for Small and Medium Enterprises (''SME'') Bank-enterprise Cooperation Projects.
12. Special Fund for Fostering Stable Growth of Foreign Trade.

13. Local Government Deposits Into Bank Accounts.

B. Loans and Directed Credit

1. Policy Loans.
2. Preferential Export Financing.
3. Treasury Bond Loans or Grants.
4. Preferential Loans for State-owned Enterprises (''SOEs'').

C. Income Tax Programs

1. ''Two Free, Three Half'' Program.
2. Provincial Tax Exemptions and Reductions for ''Productive'' Foreign Invested. Enterprises (''FIEs'').
3. Tax Reductions for FIEs Purchasing Chinese-made Equipment.
4. Tax Reductions for FIEs in Designated Geographic Locations.
5. Tax Reductions for Technology- or Knowledge-intensive FIEs
6. Tax Reductions for FIEs that are also High or New Technology Enterprises (''HNTEs'').
7. Tax Reductions for HNTEs Involved in Designated Projects.
8. Tax Offsets for Research and Development at FIEs.
9. Tax Credits for Domestically Owned Companies Purchasing Chinese-made Equipment.
10. Tax Reductions for Export-oriented FIEs.
11. Tax Refunds for Reinvestment of FIE Profits in Export-Oriented Enterprises.
12. Tax Reduction for High-tech Industries in Guangdong Province.

D. Other Tax Programs

1. Import Tariff and Value Added Tax (''VAT'') Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries.
2. VAT Rebates on FIE Purchases of Domestically Produced Equipment.
3. City Tax and Surcharge Exemptions for FIEs.
4. Exemptions from Administrative Charges for Companies in Industrial Zones.
5. Export Subsidies Characterized as ''VAT Rebates''.
6. VAT and Import Duty Exemptions on Imported Material.
7. VAT Rebates on Domestically Produced Equipment.

E. Government Provision of Goods or Services for Less Than Adequate Remuneration (''LTAR'')

1. Land to SOEs.
2. Lands to Companies Located in Industrial or Other Special Economic Zones.
3. Electricity.
4. Stainless Steel Coils.

F. Subsidies to Enterprises Located in Industrial Cluster Zones

1. Exemptions from Land Development Fees.
2. Land Purchase Grants.
3. Grants to Hire Post-doctoral Workers.
4. Financial Subsidies: Interest Subsidies, Preferential Loans, and Lowered Interest Rates.
5. Tax Reductions or Exemptions.

We are not including in our investigation the following programs alleged to benefit producers and exporters of the subject merchandise in the PRC:

1. Tax Exemptions and Reductions for Enterprises That Utilize Recycled Materials.
2. The State Science and Technology Support Scheme.
3. Provincial Loan Discount Special Fund for SMEs.
4. Tax Preferences Available to Companies That Operate at a Small Profit.

For further information explaining why the Department is not investigating these programs, *see* CVD Initiation Checklist.

Respondent Selection

For this investigation, the Department expects to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of investigation. We intend to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within seven calendar days of publication of this **Federal Register** notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the representatives of the GOC. Because of the particularly large number of producers/exporters identified at Exhibit I–2 of the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by the delivery of the public version to the GOC, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition is filed, whether there is a reasonable indication that imports of subsidized drawn stainless steel sinks from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. *See* section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

Notification to Interested Parties

Interested parties must submit applications for disclosure under protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634. Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any AD or CVD proceedings initiated on or after March 14, 2011. *See Certification of Factual Information for Import Administration during Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (*Interim Final Rule*), amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* Foreign governments and their officials may continue to submit certifications in either the format that was in use prior to the effective date of the *Interim Final Rule,* or in the format provided in the *Interim Final Rule. See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011). The Department intends to reject factual information submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: March 21, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–7331 Filed 3–26–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Education Mission to Brazil; Brasilia, Rio de Janeiro and São Paulo, Brazil, August 30–September 6, 2012

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service is publishing this supplement to the Notice of the U.S. Education Mission to Brazil, 77 FR 13560, Mar. 7, 2012, to announce that the Mission will be executive-led and to amend the Notice to provide for selection of applicants on a rolling basis.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service now anticipates that this Mission will be led by a senior-level U.S. government official. For that reason, consistent with Department policy, participants will now be selected through a two-tier vetting process. In order to expedite the notification of applicants, the U.S. Department of Commerce will review applications and make selection decisions on a rolling basis.

Amendments

1. For the reasons stated above, the Timeframe for Recruitment and Applications section of the Notice of the *Education Mission to Brazil,* 77 FR 13560, Mar. 7, 2012, is amended to read as follows:

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://export.gov/industry/education/*) and other Internet web sites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than August 15, 2012. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis beginning April 4, 2012. Applications received after August 15, 2012 will be considered only if space and scheduling constraints permit.

Contact Information

U.S. Commercial Service in Brazil

Patricia S. Marega, Business Development Specialist, São Paulo, Tel: (55–11) 5186–7482, *patricia.marega@trade.gov.*

U.S. Export Assistance Center

Joan Kanlian, Westchester USEAC Director, Tel: 914–682–6712, Email: *Joan.Kanlian@trade.gov.*

Elnora Moye,

Trade Program Assistant.

[FR Doc. 2012–7312 Filed 3–26–12; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Rules for Patent Maintenance Fees.

Form Number(s): PTO/SB/45/47/65/66.

Agency Approval Number: 0651–0016.

Type of Request: Revision of a currently approved collection.

Burden: 43,605 hours annually.

Number of Respondents: 573,161 responses per year.

Avg. Hours per Response: The USPTO estimates that it will take the public approximately 20 seconds (0.006 hours) to 8 hours to submit the information in this collection, including the time to gather the necessary information, prepare the appropriate form or petition, and submit the completed request to the USPTO.

Needs and Uses: Under 35 U.S.C. 41 and 37 CFR 1.20(e)–(i) and 1.362–1.378, the USPTO charges fees for maintaining in force all utility patents based on applications filed on or after December 12, 1980. Payment of these maintenance fees is due at 3½, 7½, and 11½ years after the date the patent was granted. If the USPTO does not receive payment of the appropriate maintenance fee and any applicable surcharge within a grace period of six months following each of the above due dates (at 4, 8, or 12 years after the date of grant), the patent will expire at that time. After a patent expires, it is no longer enforceable. The public uses this collection to submit patent maintenance fee payments, to file petitions regarding delayed or refused payments, and to designate an address to be used for fee-related correspondence.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Frequency: On occasion and three times at four-year intervals following the grant of the patent.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, email: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *www.reginfo.gov*.

Paper copies can be obtained by:

- *Email:* *InformationCollection@uspto.gov*. Include ''0651–0016 copy request'' in the subject line of the message.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before April 26, 2012 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov*, or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: March 22, 2012.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2012–7284 Filed 3–26–12; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Notice of Sunshine Act Meetings

TIME AND DATE: 10 a.m., Friday April 6, 2012.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–7447 Filed 3–23–12; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Notice of Sunshine Act Meetings

TIME AND DATE: 10 a.m., Friday April 20, 2012.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance, Enforcement Matters and a Rule Enforcement Review. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–7450 Filed 3–23–12; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Notice of Sunshine Act Meetings

TIME AND DATE: 10 a.m., Friday April 27, 2012.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–7451 Filed 3–26–12; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Notice of Sunshine Act Meetings

TIME AND DATE: 10 a.m., Friday April 13, 2012.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–7448 Filed 3–23–12; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Investing in Innovation Fund, Scale-Up Grants

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information

Investing in Innovation Fund, Scale-up Grants, Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.411A (Scale-up grants).

DATES:

Applications Available: March 29, 2012.

Deadline for Notice of Intent to Apply: April 16, 2012.

Deadline for Transmittal of Applications: May 29, 2012.

Deadline for Intergovernmental Review: July 25, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Investing in Innovation Fund (i3), established under section 14007 of the American Recovery and Reinvestment Act of 2009 (ARRA), provides funding to support (1) local educational agencies (LEAs), and (2) nonprofit organizations in partnership with (a) one or more LEAs or (b) a consortium of schools. The purpose of this program is to provide competitive grants to applicants with a record of improving student achievement and attainment in order to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement or student growth (as defined in this notice), closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates.

These grants will (1) allow eligible entities to expand and develop innovative practices that can serve as models of best practices, (2) support partnerships between eligible entities and the private sector and philanthropic community, and (3) support eligible entities in identifying and documenting best practices that can be shared and taken to scale based on demonstrated success.

Under this program, the Department awards three types of grants: ''Scale-up'' grants, ''Validation'' grants, and ''Development'' grants. The three grant types differ in the evidence that an applicant is required to submit in support of its proposed project; the expectations for ''scaling up'' successful projects during or after the grant period, either directly or through partners; and the funding that a successful applicant is eligible to receive. This notice invites applications for Scale-up grants. The notice inviting applications for Validation grants is published elsewhere in this issue of the **Federal Register**. The notice inviting applications for Development grants was published in the **Federal Register** on February 24, 2012 (77 FR 11087) and is available at *http://www.gpo.gov/fdsys/pkg/FR–2012–02–24/pdf/2012–4357.pdf.*

Scale-up grants provide funding to ''scale up'' practices, strategies, or programs for which there is *strong evidence* (as defined in this notice) that

the proposed practice, strategy, or program will have a statistically significant effect on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates, and that the effect of implementing the proposed practice, strategy, or program will be substantial and important. An applicant for a Scale-up grant may also demonstrate success through an intermediate variable strongly correlated with these outcomes, such as teacher or principal effectiveness.

An applicant for a Scale-up grant must estimate the number of students to be reached by the proposed project and provide evidence of its capacity to reach the proposed number of students during the course of the grant. In addition, an applicant for a Scale-up grant must provide evidence of its capacity (e.g., qualified personnel, financial resources, management capacity) to scale up to a State, regional, or national level, working directly or through partners either during or following the grant period. We recognize that LEAs are not typically responsible for taking to scale their practices, strategies, or programs in other LEAs and States. However, all applicants, including LEAs, can and should partner with others (e.g., State educational agencies) to disseminate and take to scale their effective practice, strategy, or program.

The Department will screen applications that are submitted for Scale-up grants in accordance with the requirements in this notice, and determine which applications have met the eligibility and other requirements in this notice. Peer reviewers will review all Scale-up grant applications that are submitted by the established deadline. However, if the Department determines that an application for a Scale-up grant does not meet the definition of *strong evidence* in this notice, or any other eligibility requirement, the Department will not consider the application for funding.

The 2012 i3 Scale-up and Validation competitions again include an absolute priority focused on innovations that complement the implementation of high standards and high-quality assessments. There has been much recent discussion about whether high standards, on their own, are likely to improve student achievement. As reports such as the *2012 Brown Center Report on American Education* [1] point out, the implementation of such standards is crucial to any impact that they may have. This points to the urgent need for practices, strategies, or programs (referred to elsewhere simply as ''practices'') that will help teachers, principals, and others apply new standards and use new assessments in ways that improve student achievement. This need is particularly time-sensitive, as much of the implementation of these standards and assessments will occur in the next several years. As such, practices that demonstrate effectiveness and meet the rigorous evidence requirements of Scale-up and Validation grants are of particular interest to the Department.

Scale-up and Validation grants require ambitious targets for the expansion of effective practices (called ''scaling up'' in the i3 competition). The Department believes that scaling up effective practices will improve student outcomes, as more effective practices replace less effective solutions to the same problems. In both the Scale-up and Validation grant competitions, the Department is particularly interested in projects that have a well-articulated plan for scaling up and a well-defined set of challenges or barriers that the Scale-up or Validation funding will enable the applicant to overcome. Using i3 funding to address known barriers to scaling up allows i3's limited funding to increase the likelihood that the work of successful projects endures and expands after Federal funding expires.

Finally, rigorous evaluation is an essential component of all i3 grants—particularly for Scale-up and Validation projects. The Department is especially interested in evaluations that go beyond addressing whether a practice is effective to identifying and formalizing the key features of a model and the factors that contribute to the model's success. In particular, the Department is interested in better understanding for whom and in what contexts particular practices are effective. The Department believes that generating this information is an important way to increase the use of effective practices in settings across the country. As indicated by the inclusion of cost-effectiveness as a selection criterion, the Department also encourages evaluations that produce reliable estimates of the cost-effectiveness of grantees' practices.

We also remind LEAs of the continuing applicability of the provisions of the Individuals with Disabilities Education Act (IDEA) for students who may be served under i3 grants. Programs proposed in applications in which LEAs participate must be consistent with the rights, protections, and processes of IDEA for students who are receiving special education and related services or are being evaluated for such services.

As described later in this notice, in connection with making competitive grant awards, an applicant is required, as a condition of receiving assistance under this program, to make civil rights assurances, including an assurance that its program or activity will comply with Section 504 of the Rehabilitation Act of 1973 and the Department's Section 504 implementing regulations, which prohibit discrimination on the basis of disability. Regardless of whether students with disabilities are specifically targeted as ''high-need'' students under a particular application for a grant program, recipients are required to comply with the nondiscrimination requirements of these laws. Among other things, the nondiscrimination requirements of these laws include an obligation that recipients ensure that students with disabilities are not discriminated against because benefits provided to all students under the recipient's program are inaccessible to students because of their disability. The Department also enforces Title II of the Americans with Disabilities Act and Title II implementing regulations, which prohibit discrimination on the basis of disability by public entities, with respect to certain public educational entities.

Changes for the FY 2012 i3 Scale-Up Competition

The absolute priority focused on teacher and principal effectiveness (Absolute Priority 1) now uses the language from the *Improving the Effectiveness and Distribution of Effective Teachers or Principals* priority established in the May 12, 2011, **Federal Register** notice of final supplemental priorities and definitions for discretionary grant programs. The language in this supplemental priority offers greater flexibility for projects to improve teacher and principal effectiveness through targeted strategies that address components of the teacher and principal pipeline, rather than its entirety, as required by the *Innovations that Support Effective Teachers and Principals* priority in the notice of final priorities, requirements, definitions, and selection criteria for this program, published in the **Federal Register** on March 12, 2010 (75 FR 12004–12071)(2010 i3 NFP).

Priorities: This competition includes five absolute priorities and five competitive preference priorities. These

[1] *http://www.brookings.edu/reports/2012/0216_brown_education_loveless.aspx*

priorities are from the 2010 i3 NFP [2] and from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486–78511), and corrected on May 12, 2011 (76 FR 27637) (Supplemental Priorities).

Absolute Priorities: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet one of these priorities. Under this competition for Scale-up grants, each of the five absolute priorities constitutes its own funding category.

An applicant for a Scale-up grant must choose one of the five absolute priorities contained in this notice and address that priority in its application. An applicant must provide information on how its proposed project addresses the selection criteria in the project narrative section of its application.

These priorities are:

Absolute Priority 1—Improving the Effectiveness and Distribution of Effective Teachers or Principals

Projects that are designed to address one or more of the following priority areas:

(a) Increasing the number or percentage of teachers or principals who are effective or reducing the number or percentage of teachers or principals who are ineffective, particularly in high-poverty schools (as defined in this notice) including through such activities as improving the preparation, recruitment, development, and evaluation of teachers and principals; implementing performance-based certification and retention systems; and reforming compensation and advancement systems.

(b) Increasing the retention, particularly in high-poverty schools (as defined in this notice), and equitable distribution of teachers or principals who are effective.

For the purposes of this priority, teacher and principal effectiveness should be measured using:

(1) Teacher or principal evaluation data, in States or local educational agencies that have in place a high-quality teacher or principal evaluation system that takes into account student growth (as defined in the footnote to this priority) in significant part and uses multiple measures, that, in the case of teachers, may include observations for determining teacher effectiveness (such as systems that meet the criteria for evaluation systems under the Race to the Top program as described in criterion (D)(2)(ii) of the Race to the Top notice inviting applications (74 FR 59803)); or

(2) Data that include, in significant part, student achievement or student growth (as defined in the footnote to this priority) data and may include multiple measures in States or local educational agencies that do not have the teacher or principal evaluation systems described in paragraph (1). (Supplemental Priorities) [3]

Absolute Priority 2—Promoting Science, Technology, Engineering, and Mathematics (STEM) Education

Under this priority, the Department provides funding to support projects that are designed to address one or more of the following areas:

(a) Providing students with increased access to rigorous and engaging coursework in STEM.

(b) Increasing the number and proportion of students prepared for postsecondary or graduate study and careers in STEM.

(c) Increasing the opportunities for high-quality preparation of, or professional development for, teachers or other educators of STEM subjects.

(d) Increasing the number of individuals from groups traditionally underrepresented in STEM, including minorities, individuals with disabilities, and women, who are provided with access to rigorous and engaging coursework in STEM or who are prepared for postsecondary or graduate study and careers in STEM.

(e) Increasing the number of individuals from groups traditionally underrepresented in STEM, including minorities, individuals with disabilities, and women, who are teachers or educators of STEM subjects and have increased opportunities for high-quality preparation or professional development. (Supplemental Priorities)

Absolute Priority 3—Innovations That Complement the Implementation of High Standards and High-Quality Assessments

Under this priority, the Department provides funding for practices, strategies, or programs that are designed to support States' efforts to transition to standards and assessments that measure students' progress toward college- and career-readiness, including curricular and instructional practices, strategies, or programs in core academic subjects (as defined in section 9101(11) of the Elementary and Secondary Education Act of 1965, as amended (ESEA)) that are aligned with high academic content and achievement standards and with high-quality assessments based on those standards.[4] Proposed projects may include, but are not limited to, practices, strategies, or programs that are designed to: (a) Increase the success of under-represented student populations in academically rigorous courses and programs (such as Advanced Placement or International Baccalaureate courses; dual-enrollment programs; ''early college high schools''; and science, technology, engineering, and mathematics courses, especially those that incorporate rigorous and relevant project-, inquiry-, or design-based contextual learning opportunities); (b) increase the development and use of formative assessments or interim assessments, or other performance-based tools and ''metrics'' that are aligned with high student content and academic achievement standards; or (c) translate the standards and information from assessments into classroom practices that meet the needs of all students, including high-need students.

Under this priority, an eligible applicant must propose a project that is based on standards that are at least as rigorous as its State's standards. If the

[2] The 2011 notice of final i3 revisions, which was published in the **Federal Register** on June 3, 2011 (76 FR 32073), provides the Secretary with the flexibility to choose one or more of the priorities established in the 2010 i3 NFP for use in any i3 competition.

[3] For purposes of this priority, the Supplemental Priorities define ''student achievement'' and ''student growth'' as follows:

''Student achievement'' means—(a) For tested grades and subjects: (1) A student's score on the State's assessments under the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools.

(b) For non-tested grades and subjects: alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

''Student growth'' means the change in student achievement (as defined in this notice) for an individual student between two or more points in time. A State may also include other measures that are rigorous and comparable across classrooms.

Note that the definitions in this footnote apply only to Absolute Priority 1 and, with respect to the term ''student achievement,'' to Competitive Preference Priority 10. Elsewhere in this notice the use of these terms refers to the i3 definitions established in the 2010 i3 NFP that are provided in the *Definitions* section of this notice.

[4] Consistent with the Race to the Top Fund, the Department interprets the core academic subject of ''science'' under section 9101(11) of the ESEA to include STEM education (science, technology, engineering, and mathematics), which encompasses a wide range of disciplines, including computer science.

proposed project is based on standards other than those adopted by the eligible applicant's State, the applicant must explain how the standards are aligned with and at least as rigorous as the eligible applicant's State's standards as well as how the standards differ. (2010 i3 NFP)

Absolute Priority 4—Innovations That Turn Around Persistently Low-Performing Schools

Under this priority, the Department provides funding to support strategies, practices, or programs that are designed to turn around schools that are in any of the following categories: (a) Persistently lowest-achieving schools (as defined in the final requirements for the School Improvement Grants program); [5] (b) Title I schools that are in corrective action or restructuring under section 1116 of the ESEA; or (c) secondary schools (both middle and high schools) eligible for but not receiving Title I funds that, if receiving Title I funds, would be in corrective action or restructuring under section 1116 of the ESEA. These schools [6] are referred to as Investing in Innovation Fund Absolute Priority 4 schools.

Proposed projects must include strategies, practices, or programs that are designed to turn around Investing in Innovation Fund Absolute Priority 4 schools through either whole-school reform or targeted approaches to reform. Applicants addressing this priority must focus on either:

(a) Whole-school reform, including, but not limited to, comprehensive interventions to assist, augment, or replace Investing in Innovation Fund Absolute Priority 4 schools, including the school turnaround, restart, closure, and transformation models of intervention supported under the Department's School Improvement Grants program (see Final Requirements for School Improvement Grants as Amended in January 2010 (January 28, 2010) at *http://www2.ed.gov/programs/sif/faq.html*); or

(b) Targeted approaches to reform, including, but not limited to: (1) Providing more time for students to learn core academic content by expanding or augmenting the school day, school week, or school year, or by increasing instructional time for core academic subjects (as defined in section 9101(11) of the ESEA); (2) integrating ''student supports'' into the school model to address non-academic barriers to student achievement; or (3) creating multiple pathways for students to earn regular high school diplomas (e.g., by operating schools that serve the needs of over-aged, under-credited, or other students with an exceptional need for support and flexibility pertaining to when they attend school; awarding credit based on demonstrated evidence of student competency; and offering dual-enrollment options). (2010 i3 NFP)

Absolute Priority 5—Improving Achievement and High School Graduation Rates (Rural Local Educational Agencies)

Under this priority, the Department provides funding to support projects that are designed to address accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for students in rural local educational agencies (as defined in this notice). (Supplemental Priorities)

Note: Absolute Priority 5 aims to support projects that address the unique challenges of serving high-need students in rural LEAs (as defined in this notice). Based on the overall i3 program requirement, set out in section III.1 of this notice, and as with all i3 projects, applicants choosing to address this priority must specify how they will serve high-need students. In addition, applicants that choose to respond to Absolute Priority 5 may want to consider identifying all rural LEAs where the project will be implemented, or explain how the applicant will choose the rural LEAs where the project will be implemented. Applicants should identify these rural LEAs on the i3 Applicant Information Sheet and provide information on the applicant's experience and skills, or the experience and skills of their partners, in serving high-need students in rural LEAs in responding to *Selection Criterion C. Quality of the Management Plan and Personnel.*

Competitive Preference Priorities: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities.

Applicants may address more than one of the competitive preference priorities; however, the Department will review and award points only for a maximum of two of the competitive preference priorities. Therefore, an applicant must identify in the project narrative section of its application the priority or priorities it wishes the Department to consider for purposes of earning competitive preference priority points.

Note: The Department will not review or award points under any competitive preference priority that (1) fails to clearly identify the competitive preference priority or priorities the applicant wishes the Department to consider for purposes of earning competitive preference priority points, or (2) identifies more than two competitive preference priorities the applicant wishes the Department to consider for purposes of earning competitive preference priority points.

These priorities are:

Competitive Preference Priority 6—Innovations for Improving Early Learning Outcomes (Zero or One Point)

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to improve educational outcomes for high-need students who are young children (birth through 3rd grade) by enhancing the quality of early learning programs. To meet this priority, applications must focus on (a) improving young children's school readiness (including social, emotional, and cognitive readiness) so that children are prepared for success in core academic subjects (as defined in section 9101(11) of the ESEA); (b) improving developmental milestones and standards and aligning them with appropriate outcome measures; and (c) improving alignment, collaboration, and transitions between early learning programs that serve children from birth to age three, in preschools, and in kindergarten through third grade. (2010 i3 NFP)

Competitive Preference Priority 7—Innovations That Support College Access and Success (Zero or One Point)

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to enable kindergarten through grade 12 (K–12) students, particularly high school students, to successfully prepare for, enter, and graduate from a two- or four-year college. To meet this priority, applications must include practices, strategies, or programs for K–12

[5] Under the final requirements for the School Improvement Grants program, ''persistently lowest-achieving schools'' means, as determined by the State, (a) any Title I school in improvement, corrective action, or restructuring that (i) is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (ii) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (b) any secondary school that is eligible for, but does not receive, Title I funds that (i) is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (ii) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years. See *http://www2.ed.gov/programs/sif/faq.html.*

[6] In this context, ''these schools'' refers to the schools described in (a) through (c) in this paragraph.

students that (a) address students' preparedness and expectations related to college; (b) help students understand issues of college affordability and the financial aid and college application processes; and (c) provide support to students from peers and knowledgeable adults. (2010 i3 NFP)

Competitive Preference Priority 8—Innovations To Address the Unique Learning Needs of Students With Disabilities and Limited English Proficient Students (Zero or One Point)

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to address the unique learning needs of students with disabilities, including those who are assessed based on alternate academic achievement standards, or the linguistic and academic needs of limited English proficient students. To meet this priority, applications must provide for the implementation of particular practices, strategies, or programs that are designed to improve academic outcomes, close achievement gaps, and increase college- and career-readiness, including increasing high school graduation rates (as defined in this notice), for students with disabilities or limited English proficient students. (2010 i3 NFP)

Competitive Preference Priority 9—Improving Productivity (Zero or One Point)

We give competitive preference to applications for projects that are designed to significantly increase efficiency in the use of time, staff, money, or other resources while improving student learning or other educational outcomes (i.e., outcome per unit of resource). Such projects may include innovative and sustainable uses of technology, modification of school schedules and teacher compensation systems, use of open educational resources (as defined in this notice), or other strategies. (Supplemental Priorities)

Competitive Preference Priority 10—Technology (Zero or One Point)

We give competitive preference to applications for projects that are designed to improve student achievement[7] or teacher effectiveness through the use of high-quality digital tools or materials, which may include preparing teachers to use the technology to improve instruction, as well as developing, implementing, or evaluating digital tools or materials. (Supplemental Priorities)

Definitions

These definitions are from the 2010 i3 NFP and the Supplemental Priorities. We may apply these definitions in any year in which this program is in effect.

Note: This notice invites applications for Scale-up grants. The following definitions apply to the three types of grants under the i3 program (Scale-up, Validation, or Development). Therefore, some definitions included in this section—primarily those related to the demonstration of evidence—may be more applicable to applications for Validation grants.

Definitions Related to Evidence From the 2010 i3 NFP

Carefully matched comparison group design means a type of quasi-experimental study that attempts to approximate an experimental study. More specifically, it is a design in which project participants are matched with non-participants based on key characteristics that are thought to be related to the outcome. These characteristics include, but are not limited to: (1) Prior test scores and other measures of academic achievement (preferably, the same measures that the study will use to evaluate outcomes for the two groups); (2) demographic characteristics, such as age, disability, gender, English proficiency, ethnicity, poverty level, parents' educational attainment, and single- or two-parent family background; (3) the time period in which the two groups are studied (e.g., the two groups are children entering kindergarten in the same year as opposed to sequential years); and (4) methods used to collect outcome data (e.g., the same test of reading skills administered in the same way to both groups).

Experimental study means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to participate in a project being evaluated (treatment group) or not to participate in the project (control group). The effect of the project is the average difference in outcomes between the treatment and control groups.

Independent evaluation means that the evaluation is designed and carried out independent of, but in coordination with, any employees of the entities who develop a practice, strategy, or program and are implementing it. This independence helps ensure the objectivity of an evaluation and prevents even the appearance of a conflict of interest.

Interrupted time series design[8] means a type of quasi-experimental study in which the outcome of interest is measured multiple times before and after the treatment for program participants only. If the program had an impact, the outcomes after treatment will have a different slope or level from those before treatment. That is, the series should show an ''interruption'' of the prior situation at the time when the program was implemented. Adding a comparison group time series, such as schools not participating in the program or schools participating in the program in a different geographic area, substantially increases the reliability of the findings.

Moderate evidence means evidence from previous studies whose designs can support causal conclusions (i.e., studies with high internal validity) but have limited generalizability (i.e., moderate external validity), or studies with high external validity but moderate internal validity. The following would constitute moderate evidence: (1) At least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) supporting the effectiveness of the

[7] For purposes of this priority, the Supplemental Priorities define student achievement as follows:

''Student achievement'' means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under section 1111(b)(3) of the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools; and

(b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Note that this definition for student achievement applies only to Absolute Priority 1 and Competitive Preference Priority 10. Elsewhere in this notice the use of this term refers to the i3 definition established in the 2010 i3 NFP that is provided in the *Definitions* section of this notice.

[8] A single subject or single case design is an adaptation of an interrupted time series design that relies on the comparison of treatment effects on a single subject or group of single subjects. There is little confidence that findings based on this design would be the same for other members of the population. In some single subject designs, treatment reversal or multiple baseline designs are used to increase internal validity. In a treatment reversal design, after a pretreatment or baseline outcome measurement is compared with a post treatment measure, the treatment would then be stopped for a period of time, a second baseline measure of the outcome would be taken, followed by a second application of the treatment or a different treatment. A multiple baseline design addresses concerns about the effects of normal development, timing of the treatment, and amount of the treatment with treatment-reversal designs by using a varying time schedule for introduction of the treatment and/or treatments of different lengths or intensity.

practice, strategy, or program, with small sample sizes or other conditions of implementation or analysis that limit generalizability; (2) at least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) that does not demonstrate equivalence between the intervention and comparison groups at program entry but that has no other major flaws related to internal validity; or (3) correlational research with strong statistical controls for selection bias and for discerning the influence of internal factors.

Quasi-experimental study means an evaluation design that attempts to approximate an experimental design and can support causal conclusions (i.e., minimizes threats to internal validity, such as selection bias, or allows them to be modeled). Well-designed quasi-experimental studies include carefully matched comparison group designs (as defined in this notice), interrupted time series designs (as defined in this notice), or regression discontinuity designs (as defined in this notice).

Regression discontinuity design study means, in part, a quasi-experimental study design that closely approximates an experimental study. In a regression discontinuity design, participants are assigned to a treatment or comparison group based on a numerical rating or score of a variable unrelated to the treatment such as the rating of an application for funding. Another example would be assignment of eligible students, teachers, classrooms, or schools above a certain score (''cut score'') to the treatment group and assignment of those below the score to the comparison group.

Strong evidence means evidence from previous studies whose designs can support causal conclusions (i.e., studies with high internal validity), and studies that in total include enough of the range of participants and settings to support scaling up to the State, regional, or national level (i.e., studies with high external validity). The following are examples of strong evidence: (1) more than one well-designed and well-implemented (as defined in this notice) experimental study (as defined in this notice) or well-designed and well-implemented (as defined in this notice) quasi-experimental study (as defined in this notice) that supports the effectiveness of the practice, strategy, or program; or (2) one large, well-designed and well-implemented (as defined in this notice) randomized controlled, multisite trial that supports the effectiveness of the practice, strategy, or program.

Well-designed and well-implemented means, with respect to an experimental or quasi-experimental study (as defined in this notice), that the study meets the What Works Clearinghouse evidence standards, with or without reservations (see *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1* and in particular the description of ''Reasons for Not Meeting Standards'' at *http://ies.ed.gov/ncee/wwc/references/idocviewer/Doc.docId=19&tocId=4#reasons* [9]).

Other Definitions From the 2010 i3 NFP

Applicant means the entity that applies for a grant under this program on behalf of an eligible applicant (i.e., an LEA or a partnership in accordance with section 14007(a)(1)(B) of the ARRA).

Consortium of schools means two or more public elementary or secondary schools acting collaboratively for the purpose of applying for and implementing an Investing in Innovation Fund grant jointly with an eligible nonprofit organization.

Formative assessment means assessment questions, tools, and processes that are embedded in instruction and are used by teachers and students to provide timely feedback for purposes of adjusting instruction to improve learning.

High-need student means a student at risk of educational failure, or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools, who are far below grade level, who are over-age and under-credited, who have left school before receiving a regular high school diploma, who are at risk of not graduating with a regular high school diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are limited English proficient.

High school graduation rate means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to use such a rate under Title I of the ESEA.

Interim assessment means an assessment that is given at regular and specified intervals throughout the school year, is designed to evaluate students' knowledge and skills relative to a specific set of academic standards, and produces results that can be aggregated (e.g., by course, grade level, school, or LEA) in order to inform teachers and administrators at the student, classroom, school, and LEA levels.

National level, as used in reference to a Scale-up grant, describes a project that is able to be effective in a wide variety of communities and student populations around the country, including rural and urban areas, as well as with the different groups of students described in section 1111(b)(3)(C)(xiii) of the ESEA (i.e., economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, and students of each gender).

Nonprofit organization means an entity that meets the definition of ''nonprofit'' under 34 CFR 77.1(c), or an institution of higher education as defined by section 101(a) of the Higher Education Act of 1965, as amended.

Official partner means any of the entities required to be part of a partnership under section 14007(a)(1)(B) of the ARRA.

Other partner means any entity, other than the applicant and any official partner, that may be involved in a proposed project.

Regional level, as used in reference to a Scale-up or Validation grant, describes a project that is able to serve a variety of communities and student populations within a State or multiple States, including rural and urban areas, as well as with the different groups of students described in section 1111(b)(3)(C)(xiii) of the ESEA (i.e., economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, and students of each gender). To be considered a regional-level project, a project must serve students in more than one LEA. The exception to this requirement would be a project implemented in a State in which the State educational agency is the sole educational agency for all schools and thus may be considered an LEA under section 9101(26) of the ESEA. Such a State would meet the definition of regional for the purposes of this notice.

Regular high school diploma means, consistent with 34 CFR 200.19(b)(1)(iv), the standard high school diploma that is awarded to students in the State and that is fully aligned with the State's academic content standards or a higher diploma and does not include a General

[9] The information found at this link when the 2010 i3 NFP was published can now be found at this link: *http://ies.ed.gov/ncee/wwc/pdf/reference_resources/wwc_procedures_v2_1_standards_handbook.pdf.*

Education Development (GED) credential, certificate of attendance, or any alternative award.

Student achievement means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under section 1111(b)(3) of the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms; and

(b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across classrooms.

Student growth means the change in student achievement data for an individual student between two or more points in time. Growth may be measured by a variety of approaches, but any approach used must be statistically rigorous and based on student achievement data, and may also include other measures of student learning in order to increase the construct validity and generalizability of the information.

Definitions From Supplemental Priorities

High-poverty school means a school in which at least 50 percent of students are eligible for free or reduced-price lunches under the Richard B. Russell National School Lunch Act or in which at least 50 percent of students are from low-income families as determined using one of the criteria specified under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, as amended. For middle and high schools, eligibility may be calculated on the basis of comparable data from feeder schools. Eligibility as a high-poverty school under this definition is determined on the basis of the most currently available data.

Open educational resources (OER) means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others.

Rural local educational agency means a local educational agency (LEA) that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under Title VI, Part B of the ESEA. Eligible applicants may determine whether a particular LEA is eligible for these programs by referring to information on the Department's Web site at *http://www2.ed.gov/nclb/freedom/local/reap.html.*

Program Authority: American Recovery and Reinvestment Act of 2009, Division A, Section 14007, Pub. L. 111–5.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final priorities, requirements, definitions, and selection criteria for this program, published in the **Federal Register** on March 12, 2010 (75 FR 12004) (2010 i3 NFP). (c) The notice of final revisions to priorities, requirements, and selection criteria for this program, published in the **Federal Register** on June 3, 2011 (76 FR 32073) (2011 Notice of Final i3 Revisions). (d) The notice of final supplemental priorities and definitions for Discretionary Grant Programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486)), and corrected on May 12, 2011 (76 FR 27637) (Supplemental Priorities).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative agreements.

Estimated Available Funds: $140,452,000.

These estimated available funds are the total amount available for all three types of grants under the i3 program (Scale-up, Validation, and Development).

Contingent upon the availability of funds and the quality of the applications received, we may make additional awards in FY 2013 or later years from the list of unfunded applicants from this competition.

Estimated Range of Awards

Scale-up grants: Up to $25,000,000.
Validation grants: Up to $15,000,000.
Development grants: Up to $3,000,000.

Estimated Average Size of Awards

Scale-up grants: $24,000,000.
Validation grants: $14,500,000.
Development grants: $3,000,000.

Estimated Number of Awards

Scale-up grants: 0–2 awards.
Validation grants: 1–5 awards.
Development grants: 10–20 awards.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36–60 months.

III. Eligibility Information

1. *Providing Innovations that Improve Achievement for High-Need Students:* All eligible applicants must implement practices, strategies, or programs for high-need students (as defined in this notice). (2010 i3 NFP)

2. *Eligible Applicants:* Entities eligible to apply for i3 grants include: (a) An LEA or (b) a partnership between a nonprofit organization and (1) one or more LEAs or (2) a consortium of schools. An eligible applicant that is a partnership applying under section 14007(a)(1)(B) of the ARRA must designate one of its official partners (as defined in this notice) to serve as the applicant in accordance with the Department's regulations governing group applications in 34 CFR 75.127 through 75.129. (2010 i3 NFP)

3. *Eligibility Requirements:* Except as specifically set forth in the *Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization* that follows, to be eligible for an award, an eligible applicant must—

(1)(A) Have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA (economically disadvantaged students, students from major racial and ethnic groups, students with limited English proficiency, students with disabilities); or

(B) Have demonstrated success in significantly increasing student academic achievement for all groups of students described in that section;

(2) Have made significant improvements in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and principals, as demonstrated with meaningful data;

(3) Demonstrate that it has established one or more partnerships with the private sector, which may include philanthropic organizations, and that the private sector will provide matching funds in order to help bring results to scale; and

(4) In the case of an eligible applicant that includes a nonprofit organization, provide in the application the names of the LEAs with which the nonprofit organization will partner, or the names of the schools in the consortium with which it will partner. If an eligible applicant that includes a nonprofit organization intends to partner with additional LEAs or schools that are not named in the application, it must describe in the application the demographic and other characteristics

of these LEAs and schools and the process it will use to select them as either official or other partners. An applicant must identify its specific partners before a grant award will be made. (2010 i3 NFP)

Note: Applicants should provide information addressing these eligibility requirements in Appendix C, under ''Other Attachments Form,'' of their applications. An applicant must provide sufficient supporting data or other information to allow the Department to determine whether the applicant has met these eligibility requirements. If the Department determines that an applicant has provided insufficient information in its application, the applicant will not have an opportunity to provide additional information.

Note about LEA Eligibility: For purposes of this program, an LEA is an LEA located within one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico. (2010 i3 NFP)

Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization: The authorizing statute specifies that an eligible applicant that includes a nonprofit organization is considered to have met the requirements in paragraphs (1) and (2) of the eligibility requirements for this program if the nonprofit organization has a record of significantly improving student achievement, attainment, or retention. For an eligible applicant that includes a nonprofit organization, the nonprofit organization must demonstrate that it has a record of significantly improving student achievement, attainment, or retention through its record of work with an LEA or schools. Therefore, an eligible applicant that includes a nonprofit organization does not necessarily need to include as a partner for its Investing in Innovation Fund grant an LEA or a consortium of schools that meets the requirements in paragraphs (1) and (2).

In addition, the authorizing statute (as amended) specifies that an eligible applicant that includes a nonprofit organization is considered to have met the requirements of paragraph (3) of the eligibility requirements in this notice if the eligible applicant demonstrates that it will meet the requirement relating to private-sector matching. (2010 i3 NFP)

4. *Cost Sharing or Matching:* To be eligible for an award, an eligible applicant must demonstrate that it has established one or more partnerships with an entity or organization in the private sector, which may include philanthropic organizations, and that the entity or organization in the private sector will provide matching funds in order to help bring project results to scale. An eligible applicant must obtain matching funds or in-kind donations equal to at least 5 percent of its grant award.[10] Selected eligible applicants must submit evidence of the full amount of private-sector matching funds following the peer review of applications. An award will not be made unless the applicant provides adequate evidence that the full amount of the private-sector match has been committed or the Secretary approves the eligible applicant's request to reduce the matching-level requirement.

The Secretary may consider decreasing the matching requirement in the most exceptional circumstances, on a case-by-case basis. An eligible applicant that anticipates being unable to meet the full amount of the private-sector matching requirement must include in its application a request to the Secretary to reduce the matching-level requirement, along with a statement of the basis for the request. (2010 i3 NFP, as revised by the 2011 Notice of Final i3 Revisions)

5. *Other:* The Secretary establishes the following requirements for the i3 program. These requirements are from the 2010 i3 NFP. We may apply these requirements in any year in which this program is in effect.

- *Evidence Standards:* To be eligible for an award, an application for a Scale-up grant must be supported by strong evidence (as defined in this notice). (2010 i3 NFP)

Note: Applicants should provide information addressing the required evidence standards in Appendix D, under ''Other Attachments Form,'' of its application. An applicant must either ensure that all evidence is available to the Department from publicly available sources and provide links or other guidance indicating where it is available; or include copies of evidence in Appendix D of the application. If the Department determines that an applicant has provided insufficient information, the applicant will not have an opportunity to provide additional information to support its application.

- *Funding Categories:* An applicant must state in its application whether it is applying for a Scale-up, Validation, or Development grant. An applicant may not submit an application for the same proposed project under more than one type of grant. An applicant will be considered for an award only for the type of grant for which it applies. (2010 i3 NFP)

- *Subgrants:* In the case of an eligible applicant that is a partnership between a nonprofit organization and (1) one or more LEAs or (2) a consortium of schools, the partner serving as the applicant may make subgrants to one or more official partners (as defined in this notice). (2010 i3 NFP)

- *Limits on Grant Awards:* (a) No grantee may receive more than two new grant awards of any type under the i3 program in a single year; (b) In any two-year period, no grantee may receive more than one new Scale-up or Validation grant; and (c) No grantee may receive more than $55 million in new grant awards under the i3 program in a single year. (2010 i3 NFP, as revised by the 2011 Notice of Final i3 Revisions)

- *Evaluation:* A grantee must comply with the requirements of any evaluation of the program conducted by the Department. In addition, the grantee is required to conduct an independent evaluation (as defined in this notice) of its project and must agree, along with its independent evaluator, to cooperate with any technical assistance provided by the Department or its contractor. The purpose of this technical assistance will be to ensure that the evaluations are of the highest quality and to encourage commonality in evaluation approaches across funded projects where such commonality is feasible and useful. Finally, the grantee must make broadly available through formal (e.g., peer-reviewed journals) or informal (e.g., newsletters) mechanisms, and in print or electronically, the results of any evaluations it conducts of its funded activities. For Scale-up and Validation grants, the grantee must also ensure the data from their evaluations are made available to third-party researchers consistent with applicable privacy requirements. (2010 i3 NFP)

- *Participation in ''Communities of Practice'':* Grantees are required to participate in, organize, or facilitate, as appropriate, communities of practice for the i3 program. A community of practice is a group of grantees that agrees to interact regularly to solve a persistent problem or improve practice in an area that is important to them. Establishment of communities of practice under the i3 program will enable grantees to meet, discuss, and collaborate with each other regarding grantee projects. (2010 i3 NFP)

IV. Application and Submission Information

1. Submission of Proprietary Information

Given the types of projects that may be proposed in applications for the i3

[10] The 2011 Notice of Final i3 Revisions modified the ''Cost Sharing and Matching'' requirement established in the 2010 i3 NFP by providing that the Secretary will specify the amount of required private-sector matching funds or in-kind donations in the notice inviting applications for the specific i3 competition. For this competition, the Secretary establishes a matching requirement of at least 5 percent of the grant award.

program, some applications may include proprietary information as it relates to confidential commercial information. Confidential commercial information is defined as information the disclosure of which could reasonably be expected to cause substantial competitive harm. Upon submission, applicants should identify any information contained in their application that they consider to be confidential commercial information. Consistent with the process followed in the prior two i3 competitions, we plan on posting the project narrative section of funded Scale-up applications on the Department's Web site. Identifying proprietary information in the submitted application will help facilitate this public disclosure process.

Applicants are encouraged to identify only the specific information that the applicant considers to be proprietary and list the page numbers on which this information can be found in Appendix I, under ''Other Attachments Form,'' of their applications. In addition to identifying the page number on which that information can be found, eligible applicants will assist the Department in making determinations on public release of the application by being as specific as possible in identifying the information they consider proprietary. Please note that, in many instances, identification of entire pages of documentation would not be appropriate.

2. Address To Request Application Package

You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www2.ed.gov/programs/innovation/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. Fax: (703) 605–6794. 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.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.411A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

3. Content and Form of Application Submission

Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Notice of Intent to Apply: April 16, 2012.

We will be able to develop a more efficient process for reviewing grant applications if we know the approximate number of applicants that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify us of the applicant's intent to submit an application for funding by completing a Web-based form. When completing this form, applicants will provide (1) the applicant organization's name and address, (2) the type of grant for which the applicant intends to apply, (3) the one absolute priority the applicant intends to address, and (4) a maximum of two of the competitive preference priorities the applicant wishes the Department to consider for purposes of earning the competitive preference priority points. Applicants may access this form online at *http://go.usa.gov/PVI.* Applicants that do not complete this form may still apply for funding.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applicants should limit the application narrative [Part III] for a Scale-up application to no more than 50 pages. Applicants are also strongly encouraged not to include lengthy appendices that contain information that could not be included in the narrative. Applicants should use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and references.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section [Part III].

4. Submission Dates and Times

Applications Available: March 29, 2012.

Deadline for Notice of Intent to Apply: April 16, 2012.

Informational Meetings: The i3 program intends to hold meetings designed to provide technical assistance to interested applicants for all three types of grants. Detailed information regarding these meetings will be provided on the i3 Web site at *http://www2.ed.gov/programs/innovation/index.html.*

Deadline for Transmittal of Applications: May 29, 2012.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 8. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice. Deadline for Intergovernmental Review: July 25, 2012.

5. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

6. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

7. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

8. Other Submission Requirements

Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the i3 program, CFDA number 84.411A (Scale-up grants), must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant applications for the i3 program at www.Grants.gov. You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (i.e., search for 84.411, not 84.411A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document), read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit

your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Carol Lyons, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W203, Washington, DC 20202–5930. Fax: (202) 205–5631.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.411A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.411A), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from the 2010 i3 NFP and from 34 CFR 75.210.[11] The points assigned to each criterion are indicated in the parenthesis next to the criterion. Applicants may earn up to a total of 100 points.

Note: In responding to the selection criteria, applicants should keep in mind that peer reviewers may consider only the information provided in the written application when scoring and commenting on the application. Therefore, applicants should draft their responses with the goal of helping peer reviewers understand:

- What the applicant is proposing to do, including the *single* Absolute Priority under which the applicant intends the application to be reviewed;
- How the proposed project will improve upon existing products, processes, or strategies for addressing similar needs;
- What the outcomes of the project will be if it is successful; and
- What the proposed project will cost and why the proposed project is an effective use of funds.

The selection criteria for the Scale-up grant competition are as follows:

A. Quality of the Project Design (up to 30 Points)

The Secretary considers the quality of the project design of the proposed project.

In determining the quality of the project design, the Secretary considers the following factors:

(1) The extent to which the proposed project has a clear set of goals and an explicit strategy, with actions that are

[11] The 2011 Notice of Final i3 Revisions establishes that the Secretary may use one or more of the selection criteria established in the 2010 i3 NFP, any of the selection criteria in 34 CFR 75.210, criteria based on the statutory requirements for the i3 program in accordance with 34 CFR 75.209, or any combination of these when establishing selection criteria for each particular type of grant (Scale-up, Validation, and Development) in an i3 competition.

(a) aligned with the priorities the eligible applicant is seeking to meet, and (b) expected to result in achieving the goals, objectives, and outcomes of the proposed project. (2010 i3 NFP)

(2) The potential and planning for the incorporation of project purposes, activities, or benefits into the ongoing work of the eligible applicant and any other partners at the end of the Scale-up grant. (2010 i3 NFP)

(3) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (34 CFR 75.210)

(4) The eligible applicant's estimate of the cost of the proposed project, which includes the start-up and operating costs per student per year (including indirect costs) for reaching the total number of students proposed to be served by the project. The eligible applicant must include an estimate of the costs for the eligible applicant or others (including other partners) to reach 100,000, 500,000, and 1,000,000 students. (2010 i3 NFP)

Note: The Secretary considers cost estimates both (a) to assess the reasonableness of the costs relative to the objectives, design, and potential significance for the total number of students to be served by the proposed project, which is determined by the eligible applicant, and (b) to understand the possible costs for the eligible applicant or others (including other partners) to reach the scaling targets of 100,000, 500,000, and 1,000,000 students for Scale-up grants. An eligible applicant is free to propose the number of students it will serve under its project, and is expected to reach that number of students by the end of the grant period. The scaling targets, in contrast, are theoretical and allow peer reviewers to assess the cost-effectiveness generally of proposed projects, particularly in cases where an initial investment may be required to support projects that operate at reduced cost in the future, whether implemented by the eligible applicant or any other entity. Grantees are not required to reach these numbers during the grant period.

Note: In responding to this criterion, the Secretary encourages the applicant to address what the applicant proposes to do for the proposed project, how the applicant will do it, what the project costs will be, why the project costs will be sufficient and reasonable to achieve the goals, objectives, and outcomes of the proposed project, and how the project costs would change if the project were scaled to serve a larger number of students (i.e., which of the costs are fixed regardless of how many students are served and which of the costs are variable and increase as more students are served). Additionally, an applicant may wish to address why the project costs are reasonable compared to what the project will accomplish, particularly in comparison to similar projects or alternative ways of achieving similar outcomes.

B. *Significance (Up to 25 Points)*

The Secretary considers the significance of the project.

In determining the significance of the project, the Secretary considers the following factors:

(1) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition.

(2) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice. (34 CFR 75.210)

(3) The importance and magnitude of the effect expected to be obtained by the proposed project, including the extent to which the project will substantially and measurably improve student achievement or student growth, close achievement gaps, decrease dropout rates, increase high school graduation rates, or increase college enrollment and completion rates. The evidence in support of the importance and magnitude of the effect would be the research-based evidence provided by the eligible applicant to support the proposed project. (2010 i3 NFP)

Note Linking Magnitude of Effect to Presented Evidence: The Secretary notes that the research evidence provided by the eligible applicant is relevant to addressing the third factor of Selection Criterion B, which concerns the importance and/or magnitude of the expected impact of the proposed project.

Note: In responding to this criterion, the Secretary encourages the applicant to explain what is exceptional about how the proposed project addresses the absolute priority under which the applicant is submitting its i3 application. Also, the Secretary encourages the applicant to explain how the proposed project reflects up-to-date knowledge from research and effective practice. Additionally, the Secretary encourages the applicant to quantify the potential impact of the proposed project, if successful, and the extent to which the project will measurably improve student achievement or student growth, close achievement gaps, decrease dropout rates, increase high school graduation rates, or increase college enrollment and completion rates.

C. Quality of the Management Plan and Personnel (Up to 25 Points)

The Secretary considers the quality of the management plan and personnel for the proposed project.

In determining the quality of the management plan and personnel for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks, as well as tasks related to the sustainability and scalability of the proposed project. (2010 i3 NFP)

(2) The qualifications, including relevant training and experience, of the project director and key project personnel, especially in managing large, complex, and rapidly growing projects. (2010 i3 NFP)

(3) The eligible applicant's capacity (e.g., in terms of qualified personnel, financial resources, or management capacity) to bring the proposed project to scale on a national, regional, or State level working directly, or through partners, either during or following the end of the grant period. (2010 i3 NFP)

Note: In responding to this criterion, the Secretary encourages applicants to address how the team's prior experiences have prepared them for implementing the proposed project successfully. In addition, the Secretary encourages applicants to identify the resources that will be required to bring the project to the appropriate level of scale, and whether the applicants possess those resources or how they will secure them.

D. Quality of Project Evaluation (Up to 20 Points)

The Secretary considers the quality of the project evaluation.

In determining the quality of the project evaluation to be conducted, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation will include a well-designed experimental study or, if a well-designed experimental study of the project is not possible, the extent to which the methods of evaluation will include a well-designed quasi-experimental study. (2010 i3 NFP)

(2) The extent to which the methods of evaluation will provide high-quality implementation data and performance feedback, and permit periodic assessment of progress toward achieving intended outcomes. (2010 i3 NFP)

(3) The extent to which the evaluation will provide sufficient information about the key elements and approach of the project so as to facilitate replication or testing in other settings. (2010 i3 NFP)

(4) The extent to which the proposed project plan includes sufficient resources to carry out the project evaluation effectively. (2010 i3 NFP)

Note: In responding to this criterion, the Secretary encourages applicants to describe the key evaluation questions and address how the proposed evaluation methodologies will allow the project to answer those

questions. This may include whether the evaluation would produce information about the effectiveness of the proposed project with the specific student populations being served with grant funds. Further, the Secretary encourages applicants to identify what implementation and performance data the evaluation will generate and how the evaluation will provide data during the period to help indicate whether the project is on track to meet its goals. Finally, applicants should address whether the budget allocates sufficient resources to support the planned evaluation.

Note: We encourage eligible applicants to review the following technical assistance resources on evaluation: (1) What Works Clearinghouse Procedures and Standards Handbook: *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1;* and (2) IES/NCEE Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/.*

2. *Review and Selection Process:* The Department will screen applications submitted in accordance with the requirements in this notice, and will determine which applications have met eligibility and other statutory requirements.

The Department will use independent peer reviewers with various backgrounds and professions, including pre-kindergarten-12 teachers and principals, college and university educators, researchers and evaluators, social entrepreneurs, strategy consultants, grant makers and managers, and others with education expertise. The Department will thoroughly screen all reviewers for conflicts of interest to ensure a fair and competitive review process.

Reviewers will read, prepare a written evaluation, and score the applications assigned to their panel, using the selection criteria provided in this notice. For Scale-up grant applications, the Department intends to conduct a single tier review and peer reviewers will review and score all eligible Scale-up applications using the selection criteria provided in this notice. If eligible applicants have chosen to address the competitive preference priorities (a maximum of two) for purposes of earning competitive preference priority points, reviewers will review and score those competitive preference priorities. If competitive preference priority points are awarded, those points will be added to the eligible applicant's score.

We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The overall purpose of the i3 program is to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement or student growth for high-need students. We have established several performance measures for the i3 Scale-up grants.

Short-term performance measures: (1) The percentage of grantees that reach their annual target number of students as specified in the application; (2) the percentage of programs, practices, or strategies supported by a Scale-up grant with ongoing well-designed and independent evaluations that will provide evidence of their effectiveness at improving student outcomes at scale; (3) the percentage of programs, practices, or strategies supported by a Scale-up grant with ongoing evaluations that are providing high-quality implementation data and performance feedback that allow for periodic assessment of progress toward achieving intended outcomes; and (4) the cost per student actually served by the grant.

Long-term performance measures: (1) The percentage of grantees that reach the targeted number of students specified in the application; (2) the percentage of programs, practices, or strategies supported by a Scale-up grant that implement a completed well-designed, well-implemented and independent evaluation that provides evidence of their effectiveness at improving student outcomes at scale; (3) the percentage of programs, practices, or strategies supported by a Scale-up grant with a completed well-designed, well-implemented and independent evaluation that provides information about the key elements and the approach of the project so as to facilitate replication or testing in other settings; and (4) the cost per student for programs, practices, or strategies that were proven to be effective at improving educational outcomes for students.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and

projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Carol Lyons, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W203, Washington, DC 20202–5930. Fax: (202) 205–5631. Telephone: (202) 453–7122 or by email: *i3@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: March 21, 2012.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2012–7362 Filed 3–26–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Investing in Innovation Fund, Validation Grants

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information

Investing in Innovation Fund, Validation Grants Notice Inviting Applications for New Awards for Fiscal Year (FY) 2012

Catalog of Federal Domestic Assistance (CFDA) Number: 84.411B (Validation grants).

DATES:

Applications Available: March 29, 2012.

Deadline for Notice of Intent to Apply: April 16, 2012.

Deadline for Transmittal of Applications: May 29, 2012.

Deadline for Intergovernmental Review: July 25, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Investing in Innovation Fund (i3), established under section 14007 of the American Recovery and Reinvestment Act of 2009 (ARRA), provides funding to support (1) local educational agencies (LEAs), and (2) nonprofit organizations in partnership with (a) one or more LEAs or (b) a consortium of schools. The purpose of this program is to provide competitive grants to applicants with a record of improving student achievement and attainment in order to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement or student growth (as defined in this notice), closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates.

These grants will (1) allow eligible entities to expand and develop innovative practices that can serve as models of best practices, (2) support partnerships between eligible entities and the private sector and philanthropic community, and (3) support eligible entities in identifying and documenting best practices that can be shared and taken to scale based on demonstrated success.

Under this program, the Department awards three types of grants: ''Scale-up'' grants, ''Validation'' grants, and ''Development'' grants. The three grant types differ in the evidence that an applicant is required to submit in support of its proposed project; the expectations for ''scaling up'' successful projects during or after the grant period, either directly or through partners; and the funding that a successful applicant is eligible to receive. This notice invites applications for Validation grants. The notice inviting applications for Scale-up grants is published elsewhere in this issue of the **Federal Register**. The notice inviting applications for Development grants was published in the **Federal Register** on February 24, 2012 (77 FR 11087) and is available at *http://www.gpo.gov/fdsys/pkg/FR–2012–02–24/pdf/2012–4357.pdf.*

Validation grants provide funding to support practices, strategies, or programs that show promise, but for which there is currently only *moderate evidence* (as defined in this notice) that the proposed practice, strategy, or program will have a statistically significant effect on improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, or increasing college enrollment and completion rates and that, with further study, the effect of implementing the proposed practice, strategy, or program may prove to be substantial and important. Scale-up grants require applicants to have strong evidence (as defined in this notice) to support their proposed project. Applications for Validation grants do not need to have the same level of research evidence to support the proposed project as is required for Scale-up grants. An applicant for a Validation grant may also demonstrate success through an intermediate variable strongly correlated with these outcomes, such as teacher or principal effectiveness.

An applicant for a Validation grant must estimate the number of students to be reached by the proposed project and provide evidence of its capacity to reach the proposed number of students during the course of the grant. In addition, an applicant for a Validation grant must provide evidence of its capacity (e.g., qualified personnel, financial resources, management capacity) to scale up to a State or regional level, working directly or through partners either during or following the grant period. We recognize that LEAs are not typically responsible for taking to scale their practices, strategies, or programs in other LEAs and States. However, all applicants, including LEAs, can and should partner with others to disseminate and take to scale their effective practice, strategy, or program.

The Department will screen applications that are submitted for

Validation grants in accordance with the requirements in this notice, and determine which applications have met the eligibility and other requirements in this notice. Peer reviewers will review all Validation grant applications that are submitted by the established deadline. However, if the Department determines that an application for a Validation grant does not meet the definition of *moderate evidence* in this notice, or any other eligibility requirement, the Department will not consider the application for funding.

The 2012 i3 Validation and Scale-up competitions again include an absolute priority focused on innovations that complement the implementation of high standards and high-quality assessments. There has been much recent discussion about whether high standards, on their own, are likely to improve student achievement. As reports such as the *2012 Brown Center Report on American Education* [1] point out, the implementation of such standards is crucial to any impact that they may have. This points to the urgent need for practices, strategies, or programs (referred to elsewhere simply as ''practices'') that will help teachers, principals, and others apply new standards and use new assessments in ways that improve student achievement. This need is particularly time-sensitive, as much of the implementation of these standards and assessments will occur in the next several years. As such, practices that demonstrate effectiveness and meet the rigorous evidence requirements of Validation and Scale-up grants are of particular interest to the Department.

Validation and Scale-up grants require ambitious targets for the expansion of effective practices (called ''scaling up'' in the i3 competition). The Department believes that scaling up effective practices will improve student outcomes, as more effective practices replace less effective solutions to the same problems. In both the Validation and Scale-up grant competitions, the Department is particularly interested in projects that have a well-articulated plan for scaling up and a well-defined set of challenges or barriers that the Validation or Scale-up funding will enable the applicant to overcome. Using i3 funding to address known barriers to scaling up allows i3's limited funding to increase the likelihood that the work of successful projects endures and expands after Federal funding expires.

Finally, rigorous evaluation is an essential component of all i3 grants—particularly for Validation and Scale-up projects. The Department is especially interested in evaluations that go beyond addressing whether a practice is effective to identifying and formalizing the key features of a model and the factors that contribute to the model's success. In particular, the Department is interested in better understanding for whom and in what contexts particular practices are effective. The Department believes that generating this information is an important way to increase the use of effective practices in settings across the country. As indicated by the inclusion of cost-effectiveness as a selection criterion, the Department also encourages evaluations that produce reliable estimates of the cost-effectiveness of grantees' practices.

We also remind LEAs of the continuing applicability of the provisions of the Individuals with Disabilities Education Act (IDEA) for students who may be served under i3 grants. Programs proposed in applications in which LEAs participate must be consistent with the rights, protections, and processes of IDEA for students who are receiving special education and related services or are being evaluated for such services.

As described later in this notice, in connection with making competitive grant awards, an applicant is required, as a condition of receiving assistance under this program, to make civil rights assurances, including an assurance that its program or activity will comply with Section 504 of the Rehabilitation Act of 1973 and the Department's Section 504 implementing regulations, which prohibit discrimination on the basis of disability. Regardless of whether students with disabilities are specifically targeted as ''high-need'' students under a particular application for a grant program, recipients are required to comply with the nondiscrimination requirements of these laws. Among other things, the nondiscrimination requirements of these laws include an obligation that recipients ensure that students with disabilities are not discriminated against because benefits provided to all students under the recipient's program are inaccessible to students because of their disability. The Department also enforces Title II of the Americans with Disabilities Act and Title II implementing regulations, which prohibit discrimination on the basis of disability by public entities, with respect to certain public educational entities.

Changes for the FY 2012 i3 Validation Competition

The absolute priority focused on teacher and principal effectiveness (Absolute Priority 1) now uses the language from the *Improving the Effectiveness and Distribution of Effective Teachers or Principals* priority established in the May 12, 2011, **Federal Register** notice of final supplemental priorities and definitions for discretionary grant programs. The language in this supplemental priority offers greater flexibility for projects to improve teacher and principal effectiveness through targeted strategies that address components of the teacher and principal pipeline, rather than its entirety, as required by the *Innovations that Support Effective Teachers and Principals* priority in the notice of final priorities, requirements, definitions, and selection criteria for this program, published in the **Federal Register** on March 12, 2010 (75 FR 12004–12071)(2010 i3 NFP).

Priorities: This competition includes five absolute priorities and five competitive preference priorities. These priorities are from the 2010 i3 NFP [2] and from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486–78511), and corrected on May 12, 2011 (76 FR 27637) (Supplemental Priorities).

Absolute Priorities: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet one of these priorities. Under this competition for Validation grants, each of the five absolute priorities constitutes its own funding category. The Secretary intends to award grants under each absolute priority for which applications of sufficient quality are submitted.

An applicant for a Validation grant must choose one of the five absolute priorities contained in this notice and address that priority in its application. An applicant must provide information on how its proposed project addresses the selection criteria in the project narrative section of its application.

These priorities are:

[1] *http://www.brookings.edu/reports/2012/0216_brown_education_loveless.aspx.*

[2] The 2011 notice of final i3 revisions, which was published in the **Federal Register** on June 3, 2011 (76 FR 32073), provides the Secretary with the flexibility to choose one or more of the priorities established in the 2010 i3 NFP for use in any i3 competition.

Absolute Priority 1—Improving the Effectiveness and Distribution of Effective Teachers or Principals

Projects that are designed to address one or more of the following priority areas:

(a) Increasing the number or percentage of teachers or principals who are effective or reducing the number or percentage of teachers or principals who are ineffective, particularly in high-poverty schools (as defined in this notice) including through such activities as improving the preparation, recruitment, development, and evaluation of teachers and principals; implementing performance-based certification and retention systems; and reforming compensation and advancement systems.

(b) Increasing the retention, particularly in high-poverty schools (as defined in this notice), and equitable distribution of teachers or principals who are effective.

For the purposes of this priority, teacher and principal effectiveness should be measured using:

(1) Teacher or principal evaluation data, in States or local educational agencies that have in place a high-quality teacher or principal evaluation system that takes into account student growth (as defined in the footnote to this priority) in significant part and uses multiple measures, that, in the case of teachers, may include observations for determining teacher effectiveness (such as systems that meet the criteria for evaluation systems under the Race to the Top program as described in criterion (D)(2)(ii) of the Race to the Top notice inviting applications (74 FR 59803)); or

(2) Data that include, in significant part, student achievement or student growth (as defined in the footnote to this priority) data and may include multiple measures in States or local educational agencies that do not have the teacher or principal evaluation systems described in paragraph (1). (Supplemental Priorities) [3]

Absolute Priority 2—Promoting Science, Technology, Engineering, and Mathematics (STEM) Education

Under this priority, the Department provides funding to support projects that are designed to address one or more of the following areas:

(a) Providing students with increased access to rigorous and engaging coursework in STEM.

(b) Increasing the number and proportion of students prepared for postsecondary or graduate study and careers in STEM.

(c) Increasing the opportunities for high-quality preparation of, or professional development for, teachers or other educators of STEM subjects.

(d) Increasing the number of individuals from groups traditionally underrepresented in STEM, including minorities, individuals with disabilities, and women, who are provided with access to rigorous and engaging coursework in STEM or who are prepared for postsecondary or graduate study and careers in STEM.

(e) Increasing the number of individuals from groups traditionally underrepresented in STEM, including minorities, individuals with disabilities, and women, who are teachers or educators of STEM subjects and have increased opportunities for high-quality preparation or professional development. (Supplemental Priorities)

Absolute Priority 3—Innovations That Complement the Implementation of High Standards and High-Quality Assessments

Under this priority, the Department provides funding for practices, strategies, or programs that are designed to support States' efforts to transition to standards and assessments that measure students' progress toward college- and career-readiness, including curricular and instructional practices, strategies, or programs in core academic subjects (as defined in section 9101(11) of the Elementary and Secondary Education Act of 1965, as amended (ESEA)) that are aligned with high academic content and achievement standards and with high-quality assessments based on those standards.[4] Proposed projects may include, but are not limited to, practices, strategies, or programs that are designed to: (a) Increase the success of under-represented student populations in academically rigorous courses and programs (such as Advanced Placement or International Baccalaureate courses; dual-enrollment programs; ''early college high schools''; and science, technology, engineering, and mathematics courses, especially those that incorporate rigorous and relevant project-, inquiry-, or design-based contextual learning opportunities); (b) increase the development and use of formative assessments or interim assessments, or other performance-based tools and ''metrics'' that are aligned with high student content and academic achievement standards; or (c) translate the standards and information from assessments into classroom practices that meet the needs of all students, including high-need students.

Under this priority, an eligible applicant must propose a project that is based on standards that are at least as rigorous as its State's standards. If the proposed project is based on standards other than those adopted by the eligible applicant's State, the applicant must explain how the standards are aligned with and at least as rigorous as the eligible applicant's State's standards as well as how the standards differ. (2010 i3 NFP)

Absolute Priority 4—Innovations That Turn Around Persistently Low-Performing Schools

Under this priority, the Department provides funding to support strategies, practices, or programs that are designed to turn around schools that are in any of the following categories: (a) Persistently lowest-achieving schools (as defined in the final requirements for the School Improvement Grants program); [5] (b) Title I schools that are in

[3] For purposes of this priority, the Supplemental Priorities define ''student achievement'' and ''student growth'' as follows:

''Student achievement'' means—(a) For tested grades and subjects: (1) A student's score on the State's assessments under the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools.

(b) For non-tested grades and subjects: alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

''Student growth'' means the change in student achievement (as defined in this notice) for an individual student between two or more points in time. A State may also include other measures that are rigorous and comparable across classrooms.

Note that the definitions in this footnote apply only to Absolute Priority 1 and, with respect to the term ''student achievement,'' to Competitive Preference Priority 10. Elsewhere in this notice the use of these terms refers to the i3 definitions established in the 2010 i3 NFP that are provided in the *Definitions* section of this notice.

[4] Consistent with the Race to the Top Fund, the Department interprets the core academic subject of ''science'' under section 9101(11) of the ESEA to include STEM education (science, technology, engineering, and mathematics) which encompasses a wide-range of disciplines, including computer science.

[5] Under the final requirements for the School Improvement Grants program, ''persistently lowest-achieving schools'' means, as determined by the State, (a) any Title I school in improvement, corrective action, or restructuring that (i) is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (ii) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (b) any

Continued

corrective action or restructuring under section 1116 of the ESEA; or (c) secondary schools (both middle and high schools) eligible for but not receiving Title I funds that, if receiving Title I funds, would be in corrective action or restructuring under section 1116 of the ESEA. These schools [6] are referred to as Investing in Innovation Fund Absolute Priority 4 schools.

Proposed projects must include strategies, practices, or programs that are designed to turn around Investing in Innovation Fund Absolute Priority 4 schools through either whole-school reform or targeted approaches to reform. Applicants addressing this priority must focus on either:

(a) Whole-school reform, including, but not limited to, comprehensive interventions to assist, augment, or replace Investing in Innovation Fund Absolute Priority 4 schools, including the school turnaround, restart, closure, and transformation models of intervention supported under the Department's School Improvement Grants program (see Final Requirements for School Improvement Grants as Amended in January 2010 (January 28, 2010) at *http://www2.ed.gov/programs/sif/faq.html*); or

(b) Targeted approaches to reform, including, but not limited to: (1) Providing more time for students to learn core academic content by expanding or augmenting the school day, school week, or school year, or by increasing instructional time for core academic subjects (as defined in section 9101(11) of the ESEA); (2) integrating ''student supports'' into the school model to address non-academic barriers to student achievement; or (3) creating multiple pathways for students to earn regular high school diplomas (e.g., by operating schools that serve the needs of over-aged, under-credited, or other students with an exceptional need for support and flexibility pertaining to when they attend school; awarding credit based on demonstrated evidence of student competency; and offering dual-enrollment options). (2010 i3 NFP)

Absolute Priority 5—Improving Achievement and High School Graduation Rates (Rural Local Educational Agencies)

Under this priority, the Department provides funding to support projects that are designed to address accelerating learning and helping to improve high school graduation rates (as defined in this notice) and college enrollment rates for students in rural local educational agencies (as defined in this notice). (Supplemental Priorities)

Note: Absolute Priority 5 aims to support projects that address the unique challenges of serving high-need students in rural LEAs (as defined in this notice). Based on the overall i3 program requirement, set out in section III.1 of this notice, and as with all i3 projects, applicants choosing to address this priority must specify how they will serve high-need students. In addition, applicants that choose to respond to Absolute Priority 5 may want to consider identifying all rural LEAs where the project will be implemented, or explain how the applicant will choose the rural LEAs where the project will be implemented. Applicants should identify these rural LEAs on the i3 Applicant Information Sheet and provide information on the applicant's experience and skills, or the experience and skills of their partners, in serving high-need students in rural LEAs in responding to *Selection Criterion C. Quality of the Management Plan and Personnel.*

Competitive Preference Priorities: For FY 2012 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities.

Applicants may address more than one of the competitive preference priorities; however, the Department will review and award points only for a maximum of two of the competitive preference priorities. Therefore, an applicant must identify in the project narrative section of its application the priority or priorities it wishes the Department to consider for purposes of earning competitive preference priority points.

Note: The Department will not review or award points under any competitive preference priority that (1) fails to clearly identify the competitive preference priority or priorities the applicant wishes the Department to consider for purposes of earning competitive preference priority points, or (2) identifies more than two competitive preference priorities the applicant wishes the Department to consider for purposes of earning competitive preference priority points.

These priorities are:

Competitive Preference Priority 6—Innovations for Improving Early Learning Outcomes (Zero or One Point)

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to improve educational outcomes for high-need students who are young children (birth through 3rd grade) by enhancing the quality of early learning programs. To meet this priority, applications must focus on (a) improving young children's school readiness (including social, emotional, and cognitive readiness) so that children are prepared for success in core academic subjects (as defined in section 9101(11) of the ESEA); (b) improving developmental milestones and standards and aligning them with appropriate outcome measures; and (c) improving alignment, collaboration, and transitions between early learning programs that serve children from birth to age three, in preschools, and in kindergarten through third grade. (2010 i3 NFP)

Competitive Preference Priority 7—Innovations That Support College Access and Success (Zero or One Point)

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to enable kindergarten through grade 12 (K–12) students, particularly high school students, to successfully prepare for, enter, and graduate from a two- or four-year college. To meet this priority, applications must include practices, strategies, or programs for K–12 students that (a) address students' preparedness and expectations related to college; (b) help students understand issues of college affordability and the financial aid and college application processes; and (c) provide support to students from peers and knowledgeable adults. (2010 i3 NFP)

Competitive Preference Priority 8—Innovations To Address the Unique Learning Needs of Students With Disabilities and Limited English Proficient Students (Zero or One Point)

We give competitive preference to applications for projects that would implement innovative practices, strategies, or programs that are designed to address the unique learning needs of students with disabilities, including those who are assessed based on alternate academic achievement standards, or the linguistic and academic needs of limited English proficient students. To meet this

secondary school that is eligible for, but does not receive, Title I funds that (i) is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (ii) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years. See *http://www2.ed.gov/programs/sif/faq.html.*

[6] In this context, ''these schools'' refers to the schools described in (a) through (c) in this paragraph.

priority, applications must provide for the implementation of particular practices, strategies, or programs that are designed to improve academic outcomes, close achievement gaps, and increase college- and career-readiness, including increasing high school graduation rates (as defined in this notice), for students with disabilities or limited English proficient students. (2010 i3 NFP)

Competitive Preference Priority 9—Improving Productivity (Zero or One Point)

We give competitive preference to applications for projects that are designed to significantly increase efficiency in the use of time, staff, money, or other resources while improving student learning or other educational outcomes (i.e., outcome per unit of resource). Such projects may include innovative and sustainable uses of technology, modification of school schedules and teacher compensation systems, use of open educational resources (as defined in this notice), or other strategies. (Supplemental Priorities)

Competitive Preference Priority 10—Technology (Zero or One Point)

We give competitive preference to applications for projects that are designed to improve student achievement[7] or teacher effectiveness through the use of high-quality digital tools or materials, which may include preparing teachers to use the technology to improve instruction, as well as developing, implementing, or evaluating digital tools or materials. (Supplemental Priorities)

Definitions

These definitions are from the 2010 i3 NFP and the Supplemental Priorities. We may apply these definitions in any year in which this program is in effect.

Note: This notice invites applications for Validation grants. The following definitions apply to the three types of grants under the i3 program (Scale-up, Validation, or Development). Therefore, some definitions included in this section—primarily those related to the demonstration of evidence—may be more applicable to applications for Scale-up grants.

Definitions Related to Evidence From the 2010 i3 NFP

Carefully matched comparison group design means a type of quasi-experimental study that attempts to approximate an experimental study. More specifically, it is a design in which project participants are matched with non-participants based on key characteristics that are thought to be related to the outcome. These characteristics include, but are not limited to: (1) Prior test scores and other measures of academic achievement (preferably, the same measures that the study will use to evaluate outcomes for the two groups); (2) demographic characteristics, such as age, disability, gender, English proficiency, ethnicity, poverty level, parents' educational attainment, and single- or two-parent family background; (3) the time period in which the two groups are studied (e.g., the two groups are children entering kindergarten in the same year as opposed to sequential years); and (4) methods used to collect outcome data (e.g., the same test of reading skills administered in the same way to both groups).

Experimental study means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to participate in a project being evaluated (treatment group) or not to participate in the project (control group). The effect of the project is the average difference in outcomes between the treatment and control groups.

Independent evaluation means that the evaluation is designed and carried out independent of, but in coordination with, any employees of the entities who develop a practice, strategy, or program and are implementing it. This independence helps ensure the objectivity of an evaluation and prevents even the appearance of a conflict of interest.

Interrupted time series design[8] means a type of quasi-experimental study in which the outcome of interest is measured multiple times before and after the treatment for program participants only. If the program had an impact, the outcomes after treatment will have a different slope or level from those before treatment. That is, the series should show an ''interruption'' of the prior situation at the time when the program was implemented. Adding a comparison group time series, such as schools not participating in the program or schools participating in the program in a different geographic area, substantially increases the reliability of the findings.

Moderate evidence means evidence from previous studies whose designs can support causal conclusions (i.e., studies with high internal validity) but have limited generalizability (i.e., moderate external validity), or studies with high external validity but moderate internal validity. The following would constitute moderate evidence: (1) At least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) supporting the effectiveness of the practice, strategy, or program, with small sample sizes or other conditions of implementation or analysis that limit generalizability; (2) at least one well-designed and well-implemented (as defined in this notice) experimental or quasi-experimental study (as defined in this notice) that does not demonstrate equivalence between the intervention and comparison groups at program entry but that has no other major flaws related to internal validity; or (3) correlational research with strong statistical controls for selection bias and for discerning the influence of internal factors.

Quasi-experimental study means an evaluation design that attempts to approximate an experimental design and can support causal conclusions (i.e., minimizes threats to internal validity, such as selection bias, or allows them to be modeled). Well-designed quasi-experimental studies include carefully matched comparison group designs (as

[7] For purposes of this priority, the Supplemental Priorities define student achievement as follows:

''Student achievement'' means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under section 1111(b)(3) of the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools; and

(b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Note that this definition for student achievement applies only to Absolute Priority 1 and Competitive Preference Priority 10. Elsewhere in this notice the use of this term refers to the i3 definition established in the 2010 i3 NFP that is provided in the *Definitions* section of this notice.

[8] A single subject or single case design is an adaptation of an interrupted time series design that relies on the comparison of treatment effects on a single subject or group of single subjects. There is little confidence that findings based on this design would be the same for other members of the population. In some single subject designs, treatment reversal or multiple baseline designs are used to increase internal validity. In a treatment reversal design, after a pretreatment or baseline outcome measurement is compared with a post treatment measure, the treatment would then be stopped for a period of time, a second baseline measure of the outcome would be taken, followed by a second application of the treatment or a different treatment. A multiple baseline design addresses concerns about the effects of normal development, timing of the treatment, and amount of the treatment with treatment-reversal designs by using a varying time schedule for introduction of the treatment and/or treatments of different lengths or intensity.

defined in this notice), interrupted time series designs (as defined in this notice), or regression discontinuity designs (as defined in this notice).

Regression discontinuity design study means, in part, a quasi-experimental study design that closely approximates an experimental study. In a regression discontinuity design, participants are assigned to a treatment or comparison group based on a numerical rating or score of a variable unrelated to the treatment such as the rating of an application for funding. Another example would be assignment of eligible students, teachers, classrooms, or schools above a certain score (''cut score'') to the treatment group and assignment of those below the score to the comparison group.

Strong evidence means evidence from previous studies whose designs can support causal conclusions (i.e., studies with high internal validity), and studies that in total include enough of the range of participants and settings to support scaling up to the State, regional, or national level (i.e., studies with high external validity). The following are examples of strong evidence: (1) More than one well-designed and well-implemented (as defined in this notice) experimental study (as defined in this notice) or well-designed and well-implemented (as defined in this notice) quasi-experimental study (as defined in this notice) that supports the effectiveness of the practice, strategy, or program; or (2) one large, well-designed and well-implemented (as defined in this notice) randomized controlled, multisite trial that supports the effectiveness of the practice, strategy, or program.

Well-designed and well-implemented means, with respect to an experimental or quasi-experimental study (as defined in this notice), that the study meets the What Works Clearinghouse evidence standards, with or without reservations (see *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1* and in particular the description of ''Reasons for Not Meeting Standards'' at *http://ies.ed.gov/ncee/wwc/references/idocviewer/Doc.aspx?docId=19&tocId=4#reasons* [9]).

Other Definitions From the 2010 i3 NFP

Applicant means the entity that applies for a grant under this program on behalf of an eligible applicant (i.e., an LEA or a partnership in accordance with section 14007(a)(1)(B) of the ARRA).

Consortium of schools means two or more public elementary or secondary schools acting collaboratively for the purpose of applying for and implementing an Investing in Innovation Fund grant jointly with an eligible nonprofit organization.

Formative assessment means assessment questions, tools, and processes that are embedded in instruction and are used by teachers and students to provide timely feedback for purposes of adjusting instruction to improve learning.

High-need student means a student at risk of educational failure, or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools, who are far below grade level, who are over-age and under-credited, who have left school before receiving a regular high school diploma, who are at risk of not graduating with a regular high school diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are limited English proficient.

High school graduation rate means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to use such a rate under Title I of the ESEA.

Interim assessment means an assessment that is given at regular and specified intervals throughout the school year, is designed to evaluate students' knowledge and skills relative to a specific set of academic standards, and produces results that can be aggregated (e.g., by course, grade level, school, or LEA) in order to inform teachers and administrators at the student, classroom, school, and LEA levels.

National level, as used in reference to a Scale-up grant, describes a project that is able to be effective in a wide variety of communities and student populations around the country, including rural and urban areas, as well as with the different groups of students described in section 1111(b)(3)(C)(xiii) of the ESEA (i.e., economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, and students of each gender).

Nonprofit organization means an entity that meets the definition of ''nonprofit'' under 34 CFR 77.1(c), or an institution of higher education as defined by section 101(a) of the Higher Education Act of 1965, as amended.

Official partner means any of the entities required to be part of a partnership under section 14007(a)(1)(B) of the ARRA.

Other partner means any entity, other than the applicant and any official partner, that may be involved in a proposed project.

Regional level, as used in reference to a Scale-up or Validation grant, describes a project that is able to serve a variety of communities and student populations within a State or multiple States, including rural and urban areas, as well as with the different groups of students described in section 1111(b)(3)(C)(xiii) of the ESEA (i.e., economically disadvantaged students, students from major racial and ethnic groups, migrant students, students with disabilities, students with limited English proficiency, and students of each gender). To be considered a regional-level project, a project must serve students in more than one LEA. The exception to this requirement would be a project implemented in a State in which the State educational agency is the sole educational agency for all schools and thus may be considered an LEA under section 9101(26) of the ESEA. Such a State would meet the definition of regional for the purposes of this notice.

Regular high school diploma means, consistent with 34 CFR 200.19(b)(1)(iv), the standard high school diploma that is awarded to students in the State and that is fully aligned with the State's academic content standards or a higher diploma and does not include a General Education Development (GED) credential, certificate of attendance, or any alternative award.

Student achievement means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under section 1111(b)(3) of the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms; and

(b) For non-tested grades and subjects: alternative measures of student learning and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across classrooms.

Student growth means the change in student achievement data for an individual student between two or more

[9] The information found at this link when the 2010 i3 NFP was published can now be found at this link: *http://ies.ed.gov/ncee/wwc/pdf/reference_resources/wwc_procedures_v2_1_standards_handbook.pdf.*

points in time. Growth may be measured by a variety of approaches, but any approach used must be statistically rigorous and based on student achievement data, and may also include other measures of student learning in order to increase the construct validity and generalizability of the information.

Definitions From Supplemental Priorities

High-poverty school means a school in which at least 50 percent of students are eligible for free or reduced-price lunches under the Richard B. Russell National School Lunch Act or in which at least 50 percent of students are from low-income families as determined using one of the criteria specified under section 1113(a)(5) of the Elementary and Secondary Education Act of 1965, as amended. For middle and high schools, eligibility may be calculated on the basis of comparable data from feeder schools. Eligibility as a high-poverty school under this definition is determined on the basis of the most currently available data.

Open educational resources (OER) means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others.

Rural local educational agency means a local educational agency (LEA) that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under Title VI, Part B of the ESEA. Eligible applicants may determine whether a particular LEA is eligible for these programs by referring to information on the Department's Web site at *http://www2.ed.gov/nclb/freedom/local/reap.html*.

Program Authority: American Recovery and Reinvestment Act of 2009, Division A, Section 14007, Pub. L. 111–5.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final priorities, requirements, definitions, and selection criteria for this program, published in the **Federal Register** on March 12, 2010 (75 FR 12004) (2010 i3 NFP). (c) The notice of final revisions to priorities, requirements, and selection criteria for this program, published in the **Federal Register** on June 3, 2011 (76 FR 32073) (2011 Notice of Final i3 Revisions). (d) The notice of final supplemental priorities and definitions for Discretionary Grant Programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486)), and corrected on May 12, 2011 (76 FR 27637) (Supplemental Priorities).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative agreements or discretionary grants.

Estimated Available Funds: $ 140,452,000.

These estimated available funds are the total amount available for all three types of grants under the i3 program (Scale-up, Validation, and Development).

Contingent upon the availability of funds and the quality of the applications received, we may make additional awards in FY 2013 or later years from the list of unfunded applicants from this competition.

Estimated Range of Awards

Scale-up grants: Up to $25,000,000.
Validation grants: Up to $15,000,000.
Development grants: Up to $3,000,000.

Estimated Average Size of Awards

Scale-up grants: $24,000,000.
Validation grants: $14,500,000.
Development grants: $3,000,000.

Estimated Number of Awards

Scale-up grants: 0–2 awards.
Validation grants: 1–5 awards.
Development grants: 10–20 awards.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36–60 months.

III. Eligibility Information

1. *Providing Innovations that Improve Achievement for High-Need Students:* All eligible applicants must implement practices, strategies, or programs for high-need students (as defined in this notice). (2010 i3 NFP)

2. *Eligible Applicants:* Entities eligible to apply for i3 grants include: (a) An LEA or (b) a partnership between a nonprofit organization and (1) one or more LEAs or (2) a consortium of schools. An eligible applicant that is a partnership applying under section 14007(a)(1)(B) of the ARRA must designate one of its official partners (as defined in this notice) to serve as the applicant in accordance with the Department's regulations governing group applications in 34 CFR 75.127 through 75.129. (2010 i3 NFP)

3. *Eligibility Requirements:* Except as specifically set forth in the *Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization* that follows, to be eligible for an award, an eligible applicant must—

(1)(A) Have significantly closed the achievement gaps between groups of students described in section 1111(b)(2) of the ESEA (economically disadvantaged students, students from major racial and ethnic groups, students with limited English proficiency, students with disabilities); or

(B) Have demonstrated success in significantly increasing student academic achievement for all groups of students described in that section;

(2) Have made significant improvements in other areas, such as graduation rates or increased recruitment and placement of high-quality teachers and principals, as demonstrated with meaningful data;

(3) Demonstrate that it has established one or more partnerships with the private sector, which may include philanthropic organizations, and that the private sector will provide matching funds in order to help bring results to scale; and

(4) In the case of an eligible applicant that includes a nonprofit organization, provide in the application the names of the LEAs with which the nonprofit organization will partner, or the names of the schools in the consortium with which it will partner. If an eligible applicant that includes a nonprofit organization intends to partner with additional LEAs or schools that are not named in the application, it must describe in the application the demographic and other characteristics of these LEAs and schools and the process it will use to select them as either official or other partners. An applicant must identify its specific partners before a grant award will be made. (2010 i3 NFP)

Note: Applicants should provide information addressing these eligibility requirements in Appendix C, under ''Other Attachments Form,'' of their applications. An applicant must provide sufficient supporting data or other information to allow the Department to determine whether the applicant has met these eligibility requirements. If the Department determines that an applicant has provided insufficient information in its application, the applicant will not have an opportunity to provide additional information.

Note about LEA Eligibility: For purposes of this program, an LEA is an LEA located within one of the 50 States, the District of Columbia, or the Commonwealth of Puerto Rico. (2010 i3 NFP)

Note about Eligibility for an Eligible Applicant that Includes a Nonprofit Organization: The authorizing statute specifies that an eligible applicant that includes a nonprofit organization is considered to have met the requirements in paragraphs (1) and (2) of the eligibility requirements for this program if the nonprofit organization has a record of significantly improving student achievement, attainment, or retention. For an eligible applicant that includes a nonprofit organization, the nonprofit organization must demonstrate that it has a record of significantly improving student achievement, attainment, or retention through its record of work with an LEA or schools. Therefore, an eligible applicant that includes a nonprofit organization does not necessarily need to include as a partner for its i3 grant an LEA or a consortium of schools that meets the requirements in paragraphs (1) and (2).

In addition, the authorizing statute (as amended) specifies that an eligible applicant that includes a nonprofit organization is considered to have met the requirements of paragraph (3) of the eligibility requirements in this notice if the eligible applicant demonstrates that it will meet the requirement relating to private-sector matching. (2010 i3 NFP)

4. *Cost Sharing or Matching:* To be eligible for an award, an eligible applicant must demonstrate that it has established one or more partnerships with an entity or organization in the private sector, which may include philanthropic organizations, and that the entity or organization in the private sector will provide matching funds in order to help bring project results to scale. An eligible applicant must obtain matching funds or in-kind donations equal to at least 10 percent of its grant award.[10] Selected eligible applicants must submit evidence of the full amount of private-sector matching funds following the peer review of applications. An award will not be made unless the applicant provides adequate evidence that the full amount of the private-sector match has been committed or the Secretary approves the eligible applicant's request to reduce the matching-level requirement.

The Secretary may consider decreasing the matching requirement in the most exceptional circumstances, on a case-by-case basis. An eligible applicant that anticipates being unable to meet the full amount of the private-sector matching requirement must include in its application a request to the Secretary to reduce the matching-level requirement, along with a statement of the basis for the request. (2010 i3 NFP, as revised by the 2011 Notice of Final i3 Revisions)

5. *Other:* The Secretary establishes the following requirements for the i3 program. These requirements are from the 2010 i3 NFP. We may apply these requirements in any year in which this program is in effect.

• *Evidence Standards:* To be eligible for an award, an application for a Validation grant must be supported by moderate evidence (as defined in this notice). (2010 i3 NFP)

Note: Applicants should provide information addressing the required evidence standards in Appendix D, under ''Other Attachments Form,'' of its application. An applicant must either ensure that all evidence is available to the Department from publicly available sources and provide links or other guidance indicating where it is available; or include copies of evidence in Appendix D of the application. If the Department determines that an applicant has provided insufficient information, the applicant will not have an opportunity to provide additional information to support its application.

• *Funding Categories:* An applicant must state in its application whether it is applying for a Scale-up, Validation, or Development grant. An applicant may not submit an application for the same proposed project under more than one type of grant. An applicant will be considered for an award only for the type of grant for which it applies. (2010 i3 NFP)

• *Subgrants:* In the case of an eligible applicant that is a partnership between a nonprofit organization and (1) one or more LEAs or (2) a consortium of schools, the partner serving as the applicant may make subgrants to one or more official partners (as defined in this notice). (2010 i3 NFP)

• *Limits on Grant Awards:* (a) No grantee may receive more than two new grant awards of any type under the i3 program in a single year; (b) In any two-year period, no grantee may receive more than one new Scale-up or Validation grant; and (c) No grantee may receive more than $55 million in new grant awards under the i3 program in a single year. (2010 i3 NFP, as revised by the 2011 Notice of Final i3 Revisions)

• *Evaluation:* A grantee must comply with the requirements of any evaluation of the program conducted by the Department. In addition, the grantee is required to conduct an independent evaluation (as defined in this notice) of its project and must agree, along with its independent evaluator, to cooperate with any technical assistance provided by the Department or its contractor. The purpose of this technical assistance will be to ensure that the evaluations are of the highest quality and to encourage commonality in evaluation approaches across funded projects where such commonality is feasible and useful. Finally, the grantee must make broadly available through formal (e.g., peer-reviewed journals) or informal (e.g., newsletters) mechanisms, and in print or electronically, the results of any evaluations it conducts of its funded activities. For Scale-up and Validation grants, the grantee must also ensure the data from their evaluations are made available to third-party researchers consistent with applicable privacy requirements. (2010 i3 NFP)

• *Participation in ''Communities of Practice'':* Grantees are required to participate in, organize, or facilitate, as appropriate, communities of practice for the i3 program. A community of practice is a group of grantees that agrees to interact regularly to solve a persistent problem or improve practice in an area that is important to them. Establishment of communities of practice under the i3 program will enable grantees to meet, discuss, and collaborate with each other regarding grantee projects. (2010 i3 NFP)

IV. Application and Submission Information

1. Submission of Proprietary Information

Given the types of projects that may be proposed in applications for the i3 program, some applications may include proprietary information as it relates to confidential commercial information. Confidential commercial information is defined as information the disclosure of which could reasonably be expected to cause substantial competitive harm. Upon submission, applicants should identify any information contained in their application that they consider to be confidential commercial information. Consistent with the process followed in the prior two i3 competitions, we plan on posting the project narrative sections of funded Validation applications on the Department's Web site. Identifying proprietary information in the submitted application will help facilitate this public disclosure process.

Applicants are encouraged to identify only the specific information that the applicant considers to be proprietary and list the page numbers on which this information can be found in Appendix I, under ''Other Attachments Form,'' of their applications. In addition to

[10] The 2011 Notice of Final i3 Revisions modified the ''Cost Sharing and Matching'' requirement established in the 2010 i3 NFP by providing that the Secretary will specify the amount of required private-sector matching funds or in-kind donations in the notice inviting applications for the specific i3 competition. For this competition, the Secretary establishes a matching requirement of at least 10 percent of the grant award.

identifying the page number on which that information can be found, eligible applicants will assist the Department in making determinations on public release of the application by being as specific as possible in identifying the information they consider proprietary. Please note that, in many instances, identification of entire pages of documentation would not be appropriate.

2. Address To Request Application Package

You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www2.ed.gov/programs/innovation/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. 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.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.411B.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., Braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

3. Content and Form of Application Submission

Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Deadline for Notice of Intent To Apply: April 16, 2012.

We will be able to develop a more efficient process for reviewing grant applications if we know the approximate number of applicants that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify us of the applicant's intent to submit an application for funding by completing a web-based form. When completing this form, applicants will provide (1) the applicant organization's name and address, (2) the type of grant for which the applicant intends to apply, (3) the one absolute priority the applicant intends to address, and (4) a maximum of two of the competitive preference priorities the applicant wishes the Department to consider for purposes of earning the competitive preference priority points. Applicants may access this form online at *http://go.usa.gov/PVI.* Applicants that do not complete this form may still apply for funding.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. Applicants should limit the application narrative [Part III] for a Validation application to no more than 35 pages. Applicants are also strongly encouraged not to include lengthy appendices that contain information that could not be included in the narrative. Applicants should use the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section [Part III].

4. Submission Dates and Times

Applications Available: March 29, 2012.

Deadline for Notice of Intent To Apply: April 16, 2012.

Informational Meetings: The i3 program intends to hold meetings designed to provide technical assistance to interested applicants for all three types of grants. Detailed information regarding these meetings will be provided on the i3 Web site at *http://www2.ed.gov/programs/innovation/index.html.*

Deadline for Transmittal of Applications: May 29, 2012.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.8. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: July 25, 2012.

5. Intergovernmental Review

This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

6. Funding Restrictions

We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

7. Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry

To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you

can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

8. Other Submission Requirements

Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the i3 program, CFDA number 84.411B (Validation grants), must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant applications for i3 program at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (i.e., search for 84.411, not 84.411B).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m.,

Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Carol Lyons, U.S. Department of Education, 400 Maryland Avenue SW., room 4W203, Washington, DC 20202–5930. FAX: (202) 205–5637.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.411B), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.411B), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. Selection Criteria

The selection criteria for this competition are from the 2010 i3 NFP and from 34 CFR 75.210.[11] The points assigned to each criterion are indicated in the parenthesis next to the criterion. Applicants may earn up to a total of 100 points.

Note: In responding to the selection criteria, applicants should keep in mind that peer reviewers may consider only the information provided in the written application when scoring and commenting on the application. Therefore, applicants should draft their responses with the goal of helping peer reviewers understand:

- What the applicant is proposing to do, including the *single* Absolute Priority under which the applicant intends the application to be reviewed;
- How the proposed project will improve upon existing products, processes, or strategies for addressing similar needs;
- What the outcomes of the project will be if it is successful; and
- What the proposed project will cost and why the proposed project is an effective use of funds.

The selection criteria for the Validation grant competition are as follows:

A. Quality of the Project Design (Up to 25 Points)

The Secretary considers the quality of the design of the proposed project.

In determining the quality of the project design, the Secretary considers the following factors:

(1) The extent to which the proposed project has a clear set of goals and an explicit strategy, with actions that are (a) aligned with the priorities the eligible applicant is seeking to meet, and (b) expected to result in achieving the goals, objectives, and outcomes of the proposed project. (2010 i3 NFP)

(2) The potential and planning for the incorporation of project purposes, activities, or benefits into the ongoing work of the eligible applicant and any other partners at the end of the Validation grant. (2010 i3 NFP)

(3) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (34 CFR 75.210)

(4) The eligible applicant's estimate of the cost of the proposed project, which

[11] The 2011 Notice of Final i3 Revisions establishes that the Secretary may use one or more of the selection criteria established in the 2010 i3 NFP, any of the selection criteria in 34 CFR 75.210, criteria based on the statutory requirements for the i3 program in accordance with 34 CFR 75.209, or any combination of these when establishing selection criteria for each particular type of grant (Scale-up, Validation, and Development) in an i3 competition.

includes the start-up and operating costs per student per year (including indirect costs) for reaching the total number of students proposed to be served by the project. The eligible applicant must include an estimate of the costs for the eligible applicant or others (including other partners) to reach 100,000, 250,000, and 500,000 students. (2010 i3 NFP)

Note: The Secretary considers cost estimates both (a) to assess the reasonableness of the costs relative to the objectives, design, and potential significance for the total number of students to be served by the proposed project, which is determined by the eligible applicant, and (b) to understand the possible costs for the eligible applicant or others (including other partners) to reach the scaling targets of 100,000, 250,000, and 500,000 students for Validation grants. An eligible applicant is free to propose the number of students it will serve under its project, and is expected to reach that number of students by the end of the grant period. The scaling targets, in contrast, are theoretical and allow peer reviewers to assess the cost-effectiveness generally of proposed projects, particularly in cases where an initial investment may be required to support projects that operate at reduced cost in the future, whether implemented by the eligible applicant or any other entity. Grantees are not required to reach these numbers during the grant period.

Note: In responding to this criterion, the Secretary encourages the applicant to address what the applicant proposes to do for the proposed project, how the applicant will do it, what the project costs will be, why the project costs will be sufficient and reasonable to achieve the goals, objectives, and outcomes of the proposed project, and how the project costs would change if the project were scaled to serve a larger number of students (*i.e.,* which of the costs are fixed regardless of how many students are served and which of the costs are variable and increase as more students are served). Additionally, an applicant may wish to address why the project costs are reasonable compared to what the project will accomplish, particularly in comparison to similar projects or alternative ways of achieving similar outcomes.

B. Significance (Up to 25 Points)

The Secretary considers the significance of the project.

In determining the significance of the project, the Secretary considers the following factors:

(1) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition. (34 CFR 75.210)

(2) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice. (34 CFR 75.210)

(3) The importance and magnitude of the effect expected to be obtained by the proposed project, including the extent to which the project will substantially and measurably improve student achievement or student growth, close achievement gaps, decrease dropout rates, increase high school graduation rates, or increase college enrollment and completion rates. The evidence in support of the importance and magnitude of the effect would be the research-based evidence provided by the eligible applicant to support the proposed project. (2010 i3 NFP)

Note Linking Magnitude of Effect to Presented Evidence: The Secretary notes that the research evidence provided by the eligible applicant is relevant to addressing the third factor of Selection Criterion B, which concerns the importance and/or magnitude of the expected impact of the proposed project.

Note: In responding to this criterion, the Secretary encourages the applicant to explain what is exceptional about how the proposed project addresses the absolute priority under which the applicant is submitting its i3 application. Also, the Secretary encourages the applicant to explain how the proposed project reflects up-to-date knowledge from research and effective practice. Additionally, the Secretary encourages the applicant to quantify the potential impact of the proposed project, if successful, and the extent to which the project will measurably improve student achievement or student growth, close achievement gaps, decrease dropout rates, increase high school graduation rates, or increase college enrollment and completion rates.

C. Quality of the Management Plan and Personnel (Up to 25 Points)

The Secretary considers the quality of the management plan and personnel for the proposed project.

In determining the quality of the management plan and personnel for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks, as well as tasks related to the sustainability and scalability of the proposed project. (2010 i3 NFP)

(2) The qualifications, including relevant training and experience, of the project director and key project personnel, especially in managing complex projects. (2010 i3 NFP)

(3) The eligible applicant's capacity (e.g., in terms of qualified personnel, financial resources, or management capacity) to bring the proposed project to scale on a State or regional level (as appropriate, based on the results of the proposed project) working directly, or through other partners, either during or following the end of the grant period. (2010 i3 NFP)

Note: In responding to this criterion, the Secretary encourages applicants to address how the team's prior experiences have prepared them for implementing the proposed project successfully. In addition, the Secretary encourages applicants to identify the resources that will be required to bring the project to the appropriate level of scale, and whether the applicant possesses those resources or how they will secure them.

D. Quality of Project Evaluation (Up to 25 Points)

The Secretary considers the quality of the project evaluation.

In determining the quality of the project evaluation to be conducted, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation will include a well-designed experimental study or a well-designed quasi-experimental study. (2010 i3 NFP)

(2) The extent to which the methods of evaluation will provide high-quality implementation data and performance feedback, and permit periodic assessment of progress toward achieving intended outcomes. (2010 i3 NFP)

(3) The extent to which the evaluation will provide sufficient information about the key elements and approach of the project so as to facilitate replication or testing in other settings. (2010 i3 NFP)

(4) The extent to which the proposed project plan includes sufficient resources to carry out the project evaluation effectively. (2010 i3 NFP)

Note: In responding to this criterion, the Secretary encourages applicants to describe the key evaluation questions and address how the proposed evaluation methodologies will allow the project to answer those questions. This may include whether the evaluation would produce information about the effectiveness of the proposed project with the specific student populations being served with grant funds. Further, the Secretary encourages applicants to identify what implementation and performance data the evaluation will generate and how the evaluation will provide data during the period to help indicate whether the project is on track to meet its goals. Finally, applicants should address whether the budget allocates sufficient resources to support the planned evaluation.

Note: We encourage eligible applicants to review the following technical assistance resources on evaluation: (1) What Works Clearinghouse Procedures and Standards Handbook: *http://ies.ed.gov/ncee/wwc/*

references/idocviewer/doc.aspx?docid=19&tocid=1; and (2) IES/NCEE Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/*.

2. Review and Selection Process

The Department will screen applications submitted in accordance with the requirements in this notice, and will determine which applications have met eligibility and other statutory requirements.

The Department will use independent peer reviewers with various backgrounds and professions, including pre-kindergarten–12 teachers and principals, college and university educators, researchers and evaluators, social entrepreneurs, strategy consultants, grant makers and managers, and others with education expertise. The Department will thoroughly screen all reviewers for conflicts of interest to ensure a fair and competitive review process.

Reviewers will read, prepare a written evaluation, and score the applications assigned to their panel, using the selection criteria provided in this notice. For Validation grant applications, the Department may conduct a two-tier review process to review and score all eligible applications. Should the Department conduct a two-tier review, reviewers will review and score all eligible Validation applications on the following three criteria: *A. Quality of the Project Design; B. Significance; C. Quality of the Management Plan and Personnel.* If eligible applicants have chosen to address the competitive preference priorities (a maximum of two) for purposes of earning the competitive preference priority points, reviewers will review and score those competitive preference priorities. If competitive preference points are awarded, those points will be added to the eligible applicant's score. Eligible applications that score highly on these three criteria will then have the remaining criterion reviewed and scored by a different panel of reviewers. The remaining criterion is D. *Quality of the Project Evaluation.*

We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. Special Conditions

Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. Award Notices

If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. Administrative and National Policy Requirements

We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. Reporting

(a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. Performance Measures

The overall purpose of the i3 program is to expand the implementation of, and investment in, innovative practices that are demonstrated to have an impact on improving student achievement or student growth for high-need students. We have established several performance measures for the i3 Validation grants.

Short-term performance measures: (1) The percentage of grantees that reach their annual target number of students as specified in the application; (2) the percentage of programs, practices, or strategies supported by a Validation grant with ongoing well-designed and independent evaluations that will provide evidence of their effectiveness at improving student outcomes; (3) the percentage of programs, practices, or strategies supported by a Validation grant with ongoing evaluations that are providing high-quality implementation data and performance feedback that allow for periodic assessment of progress toward achieving intended outcomes; and (4) the cost per student actually served by the grant.

Long-term performance measures: (1) The percentage of grantees that reach the targeted number of students specified in the application; (2) the percentage of programs, practices, or strategies supported by a Validation grant that implement a completed well-designed, well-implemented and independent evaluation that provides evidence of their effectiveness at improving student outcomes; (3) the percentage of programs, practices, or strategies supported by a Validation grant with a completed well-designed, well-implemented and independent evaluation that provides information about the key elements and the approach of the project so as to facilitate replication or testing in other settings; and (4) the cost per student for programs, practices, or strategies that were proven to be effective at improving educational outcomes for students.

5. Continuation Awards

In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved

application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Carol Lyons, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W203, Washington, DC 20202–5930. FAX: (202) 205–5631. Telephone: (202) 453–7122 or by email: *i3@ed.gov*.

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: March 21, 2012.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2012–7365 Filed 3–26–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Chairs

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Chairs. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, April 18, 2012, 8 a.m.–5 p.m.; Thursday, April 19, 2012, 8 a.m.–12:15 p.m.

ADDRESSES: Luther F. Carson Four Rivers Center, 100 Kentucky Avenue, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Catherine Alexander, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; Phone: (202) 586–7711.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda Topics

Wednesday, April 18, 2012

- EM Program Update
- Recognition of Departing Chairs
- EM SSAB Chairs' Round Robin: Chairs' Site Reports
- EM Headquarters Budget Update
- EM Headquarters Waste Disposition Update
- EM SSAB Chairs' Round Robin: Cross-Complex Issues

Thursday, April 19, 2012

- DOE Headquarters News and Views
- EM SSAB Best Practices: Leveraging Public Involvement
- EM SSAB Chairs' Roundtable Discussion: Product Development and Summary

Public Participation: The EM SSAB Chairs welcome the attendance of the public at their advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Catherine Alexander at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed either before or after the meeting with the Designated Federal Officer, Catherine Alexander, at the address or telephone listed above. Individuals who wish to make oral statements pertaining to agenda items should also contact Catherine Alexander. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Catherine Alexander at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.em.doe.gov/stakepages/ssabchairs.aspx.*

Issued at Washington, DC, on March 20, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–7306 Filed 3–26–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board (SEAB). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, April 17, 2012, 9 a.m.–4 p.m.

ADDRESSES: Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439.

FOR FURTHER INFORMATION CONTACT: Alyssa Morrissey, Deputy Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; telephone (202) 586–2926 or facsimile (202) 586–1441; email: *seab@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The Board was reestablished to provide advice and recommendations to the Secretary on the Department's basic and applied research, economic and national security policy, educational issues, operational issues and other activities as directed by the Secretary.

Purpose of the Meeting: This is one of the quarterly meetings of the Board. This meeting will provide briefings to the Board and an opportunity for the subcommittees to report on their progress.

Tentative Agenda: The meeting will start at 9 a.m. on April 17, 2012, and will serve as an update meeting for the Board. The tentative meeting agenda includes opening remarks from the Secretary, briefings from the Laboratory, reports on planned activities from subcommittees, and an opportunity for public comment. The meeting will conclude at 4 p.m.

Public Participation: The meeting is open to the public. Individuals who would like to attend must RSVP to Ms. Morrissey no later than 5 p.m. on Friday, April 13, 2012, by email at: *seab@hq.doe.gov.* Please provide your name, organization, citizenship, and contact information. Anyone attending the meeting will be required to present government issued identification. Those wishing to speak are required to register and may do so beginning at 9 a.m. on April 17, 2012. Individuals and representatives of organizations who would like to offer comments and suggestions may do so at the end of the meeting on Tuesday, April 17, 2012. Approximately 30 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed 5 minutes. Those not able to attend the meeting or have insufficient time to address the committee are invited to send a written statement to Alyssa Morrissey, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, or email to *seab@hq.doe.gov.*

The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available on the SEAB Web site *http://www.energy.gov/SEAB* or by contacting Ms. Morrissey. She may be reached at the postal address or email address above.

Issued in Washington, DC, on March 22, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–7307 Filed 3–26–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Hydrogen and Fuel Cell Technical Advisory Committee (HTAC); Notice of Open Meeting

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

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Hydrogen and Fuel Cell Technical Advisory Committee (HTAC). The Federal Advisory Committee Act, Public Law 92–463, 86 Stat. 770, requires that agencies publish notice of an advisory committee meeting in the **Federal Register**.

DATES: Wednesday, May 9, 2012, 9 a.m.–5:30 p.m.; and Thursday, May 10, 2012, 9 a.m.–2 p.m.

ADDRESSES: Radisson Reagan Airport, 2020 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: email to *HTAC@nrel.gov* or at the mailing address: Jason Marcinkoski, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Hydrogen and Fuel Cell Technical Advisory Committee (HTAC) was established under Section 807 of the Energy Policy Act of 2005 (EPACT), Public Law 109–58; 119 Stat. 849, to provide advice and recommendations to the Secretary of Energy on the program and activities authorized by Title VIII of EPACT.

Tentative Agenda: (Subject to change; updates will be posted on *http://hydrogen.energy.gov* and copies of the final agenda will be available the date of the meeting.)

- Public Comment
- Hydrogen as an Enabler for Renewable Energy
- Industry and Entrepreneurial Presentations
- Hydrogen Codes and Standards
- Indiana's Hydrogen and Fuel Cell Initiatives
- Working Group Updates

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the meeting of HTAC and to make oral statements during the specified period for public comment. The public comment period will take place between 9 a.m. and 9:45 a.m. on May 9, 2012. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, email *HTAC@nrel.gov* at least 5 business days before the meeting. Please indicate if you will be attending the meeting, whether you want to make an oral statement, and what organization you represent (if appropriate). Members of the public will be heard in the order in which they sign up for the public comment period. Oral comments should be limited to two minutes in length. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the committee will make every effort to hear the views of all interested parties and to facilitate the orderly conduct of business. If you would like to file a written statement with the committee, you may do so either by submitting a hard copy at the meeting or by submitting an electronic copy to *HTAC@nrel.gov.*

Minutes: The minutes of the meeting will be available for public review at *http://hydrogen.energy.gov.*

Issued at Washington, DC, on March 22, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–7315 Filed 3–26–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, April 11, 2012, 6 p.m.

ADDRESSES: Department of Energy Information Center, 1 Science.gov Way, Oak Ridge, Tennessee 37830.

FOR FURTHER INFORMATION CONTACT: Melyssa P. Noe, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 576–0956 or email: *noemp@oro.doe.gov* or check the Web site at *www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the

areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The scheduled topic is an update on the status of the Uranium-233 Project at Oak Ridge National Laboratory.

Public Participation: The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm.*

Issued at Washington, DC, on March 20, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–7308 Filed 3–26–12; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0489; FRL 9515–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Air Emissions Reporting Requirements (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 26, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2004–0489, 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 by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kim D. Paylor, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Mail Code C339–02, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 919–541–5474; fax number: 919–541–0684; email address: *paylor.kim@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 14, 2011 (76 FR 56750), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2004–0489, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Air Emissions Reporting Requirements (Renewal).

ICR Numbers: EPA ICR No. 2170.04, OMB Control No. 2060–0580.

ICR Status: This ICR is scheduled to expire on April 30, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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 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 in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The United States Environmental Protection Agency (EPA) promulgated the Air Emissions Reporting Requirements (AERR) on December 17, 2008 (73 FR 76539). The AERR consolidated and streamlined previous requirements of several older rules for State, Territorial, and local air pollution control agencies to report air emissions to the EPA annually. The ICR is being submitted to renew EPA's authority to collect air emissions-related information from States and local agencies for the three-year cycle that will include emissions reporting for inventory years 2012, 2013, and 2014, which are due to be reported on December 31 of the year following each inventory year.

Under the final AERR ICR, 55 State and Territorial air quality agencies, including the District of Columbia (DC), and an estimated 49 local air quality agencies, must annually submit emissions data for point sources emitting specified levels of oxides of nitrogen (NO_X), carbon monoxide (CO), sulfur dioxide (SO_2), volatile organic compounds (VOCs), particulate matter

less than or equal to 10 micrometers in diameter (PM_{10}), particulate matter less than or equal to 2.5 micrometers in diameter ($PM_{2.5}$), and ammonia (NH_3).

Every 3 years, States are required to submit a point source inventory, as well as a statewide stationary nonpoint, onroad mobile, and nonroad mobile source inventory for all criteria pollutants and their precursors. The emissions data submitted for the annual and 3-year cycle inventories are used by EPA's Office of Air Quality Planning and Standards (OAQPS) to assist in developing ambient air quality emission standards, performing regional modeling, and preparing national trends assessments and other special analyses and reports.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 656 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State, territorial and local government air quality management programs.

Estimated Number of Respondents: 104.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 68,192.

Estimated Total Annual Cost: $4,735,411, which includes $116,480 annualized capital and O&M costs.

Changes in the Estimates: There is an increase of 17,097 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to calculation differences either in the incremental change estimates from the CERR (2060–0088) and NO_X SIP Call (2060–0445) ICRs to the original AERR ICR approval or to the annualization of the burden hours for the 3-year reporting cycle in the original AERR ICR approval.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–7323 Filed 3–26–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2011–0997, FRL–9514–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Contractor Cumulative Claim and Reconciliation (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 26, 2012.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OARM–2011–0997, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *oei.docket@epa.gov* or by mail to EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket (OEI), Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Holly Hubbell, Office of Administration and Resources Management (3802R), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–1091; email address: *hubbell.holly@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 28, 2011 (76 FR 81490), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OARM–2011–0997, which is available for online viewing at *www.regulations.gov,* or in person viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752.

Use EPA's electronic docket and comment system at *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: Contractor Cumulative Claim and Reconciliation (Renewal).

ICR number: EPA ICR No. 0246.11, OMB Control No. 2030–0016.

ICR status: This ICR is scheduled to expire on May 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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 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 in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: At the completion of a cost reimbursement contract, contractors will report final costs incurred, including direct labor, materials, supplies, equipment, other direct charges, subcontracting, consultant fees, indirect costs, and fixed fee. Contractors will report this information on EPA Form 1900–10. EPA will use this information to reconcile the contractor's costs. Establishment of the final costs and fixed fee is necessary to close out the contract. Responses to the information collection are mandatory for those contractors completing work under a cost reimbursement contract, and are required to receive final payment. Information submitted is protected from public release in accordance with the Agency's confidentiality regulation, 40 CFR 2.201 et seq.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: All contractors who have completed an EPA cost reimbursement type contract.

Estimated Number of Respondents: 20.

Frequency of Response: Once.

Estimated Total Annual Burden Hours: 80 hours.

Estimated Total Annual Cost: $9,265.80, includes $264.00 annualized capital or O&M costs.

Changes in the Estimates: There are no changes to the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–7321 Filed 3–26–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 20. 2012.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *PSB Holdings, Inc.,* Wausau, Wisconsin; to acquire 100 percent of the voting shares of Marathon State Bank, Marathon, Wisconsin.

Board of Governors of the Federal Reserve System, March 22, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–7294 Filed 3–26–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0335; 30-Day Notice]

Agency Information Collection Request; 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–5806.

Proposed Project: Trends in U.S. Public Awareness of Racial and Ethnic Health Disparities (1999–2015)—Extension—OMB# 0990–0335—Office of Minority Health (OMH).

Abstract: The proposed survey seeks to collect data for one of OMH's annual performance measures, approved by the Office of Management and Budget (OMB) in February 2007, following OMB's examination of OMH using the Program Assessment Rating Tool (PART). This measure is to ''increase awareness of racial/ethnic health status and health care disparities in the general population.'' Findings from this data collection will enable OMH to track progress on this measure over time as necessitated by current OMB-approved program assessment requirements.

The lack of general awareness and understanding about the nature and extent of racial and ethnic health disparities in the U.S. and the impact that such disparities are having on the overall health of the Nation have been cited as a major barrier to the provision of programmatic, budgetary, and policy attention to these issues. Therefore, one of the long-term, annual measures agreed upon was to ''increase awareness

of racial/ethnic health status and health care disparities in the general population.''

Additionally, OMH can use the findings about progress made in raising awareness to identify collaborative partners in the federal government, at the state and local levels, among businesses and non-profits, and among the faith community, in order to reach a wider audience. Further, these results can be used by program decision-makers and policy-makers, within and outside of HHS, who are interested in capturing progress made over time as HHS disseminates information to the U.S. population that confirms the existence, and societal effects, of racial and ethnic health disparities.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents*	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
General Population	3,159	1	14/60	737
Physician	340	1	14/60	79
Total				816

* Based on actual completion rates from the 2010 OMH/NORC survey.

Keith A. Tucker,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2012–7287 Filed 3–26–12; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Comments on Issues of Privacy and Access With Regard to Human Genome Sequence Data

AGENCY: The Presidential Commission for the Study of Bioethical Issues, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Presidential Commission for the Study of Bioethical Issues is requesting public comment on the ethical issues raised by the ready availability of large-scale human genome sequence data, with regard to privacy and data access and the balancing of individual and societal interests.

DATES: To assure consideration, comments must be received by May 25, 2012. Comments received after this date will be considered only as time permits.

ADDRESSES: Individuals, groups, and organizations interested in commenting on this topic may submit comments by email to *info@bioethics.gov* or by mail to the following address: Public Commentary, The Presidential Commission for the Study of Bioethical Issues, 1425 New York Ave. NW., Suite C–100, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Cary Scheiderer, Senior Policy and Research Analyst, The Presidential Commission for the Study of Bioethical Issues, 1425 New York Avenue NW., Suite C–100, Washington, DC 20005. Telephone: 202–233–3960. Email: *cary.scheiderer@bioethics.gov*. Additional information may be obtained at *http://www.bioethics.gov*.

SUPPLEMENTARY INFORMATION: On November 24, 2009, the President established The Presidential Commission for the Study of Bioethical Issues (Commission) to advise him on bioethical issues generated by novel and emerging research in biomedicine and related areas of science and technology. The Commission is charged to identify and promote policies and practices that assure ethically responsible conduct of scientific research and healthcare delivery. Undertaking these duties, the Commission seeks to identify and examine specific bioethical, legal, and social issues related to potential scientific and technological advances; examine diverse perspectives and possibilities for international collaboration on these issues; and recommend legal, regulatory, or policy actions as appropriate.

The Commission is examining issues of privacy and access as pertains to large-scale human genome sequence data, including whole exome and whole genome data. As a result of the tremendous technological advances that have dramatically reduced the cost of sequencing, the science is at a point where relatively inexpensive, rapid sequencing of whole human genomes appears not only likely, but imminent. This prospect raises many questions for the scientific, medical, ethics, and patient communities related to how this information can and ought be collected, used, and governed. At the February 2012 meeting, the Commission decided to focus specifically on those questions related to privacy and data access and the balancing of individual and societal interests.

The Commission will spend the next six months soliciting additional input from the scientific, ethics, and patient communities, as well as others, to help inform our deliberations of these important topics. The Commission will provide the President with a report of its findings and recommendations later this year.

The Commission is particularly interested in policies, practices, research, and perspectives on issues of privacy and data access as they relate to the integration of large-scale human genome sequencing into research and clinical care. To this end, the Commission is inviting interested parties to provide input and advice through written comments.

Among other issues, the Commission is interested in receiving comments on the implications of large-scale human genome sequencing for the privacy of individuals, research subjects, patients and their families; the views of those groups and medical professional communities about privacy, both as regards genomic information and evolving notions of privacy, as evidenced and influenced by social media; and models and mechanisms for protecting privacy, in both genetic/genomic databases and biobanks, but also in large databases of sensitive information. The Commission is further interested in receiving comments on issues related to balancing individual and societal interests with regard to the sharing of and access to large-scale human genomic data; the views of patients and other stakeholders on who should have access to these data and who should control access; models and mechanisms for governing access to genomic information; the role of health information technology in providing and governing access to genomic data; and access to genetic/genomic

information by law enforcement entities.

Please address comments by email to *info@bioethics.gov*, or by mail to the following address: Public Commentary, The Presidential Commission for the Study of Bioethical Issues, 1425 New York Avenue NW., Suite C–100, Washington, DC 20005. Comments will be publicly available, including any personally identifiable or confidential business information that they contain. Trade secrets should not be submitted.

Dated: March 21, 2012.

Wanda K. Jones,

Principal Deputy Secretary for Health, Department of Health and Human Services.

[FR Doc. 2012–7329 Filed 3–26–12; 8:45 am]

BILLING CODE 4154–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Minority Health

AGENCY: Office of Minority Health, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the Advisory Committee on Minority Health (ACMH) will hold a meeting. The meeting is open to the public. Preregistration is required for both public attendance and comment. Any individual who wishes to attend the meeting and/or participate in the public comment session should email *acmh@osophs.dhhs.gov*.

DATES: The meeting will be held on Thursday, April 26, 2012 from 9 a.m. to 5 p.m. and Friday, April 27, 2012 from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Doubletree Hotel, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Ms. Monica A. Baltimore, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852. Phone: 240–453–2882 Fax: 240–453–2883.

SUPPLEMENTARY INFORMATION: In accordance with Public Law 105–392, the ACMH was established to provide advice to the Deputy Assistant Secretary for Minority Health in improving the health of each racial and ethnic minority group and on the development of goals and specific program activities of the Office of Minority Health.

Topics to be discussed during this meeting will include strategies to improve the health of racial and ethnic minority populations through the development of health policies and programs that will help eliminate health disparities, as well as other related issues.

Public attendance at the meeting is 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 designated contact person at least fourteen (14) business days prior to the meeting. Members of the public will have an opportunity to provide comments at the meeting. Public comments will be limited to three minutes per speaker. Individuals who would like to submit written statements should mail or fax their comments to the Office of Minority Health at least seven (7) business days prior to the meeting. Any members of the public who wish to have printed material distributed to ACMH committee members should submit their materials to the Executive Director, ACMH, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852, prior to close of business April 19, 2012.

Dated: March 13, 2012.

Monica A. Baltimore,

Executive Director, Advisory Committee on Minority Health, Office of Minority Health, Office of the Assistant Secretary for Health, Office of the Secretary, U.S. Department of Health and Human Services.

[FR Doc. 2012–7330 Filed 3–26–12; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Decision To Evaluate a Petition To Designate a Class of Employees From the Winchester Engineering and Analytical Center in Winchester, MA, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: NIOSH gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees from the Winchester Engineering and Analytical Center in Winchester, Massachusetts, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Winchester Engineering and Analytical Center.

Location: Winchester, Massachusetts.

Job Titles and/or Job Duties: All employees of the Department of Energy, its predecessor agencies, and its contractors and subcontractors.

Period of Employment: October 1, 1952 to December 31, 1961.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2012–7292 Filed 3–26–12; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[30-Day–12–12BK]

Agency for Toxic Substances and Disease Registry; Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Prospective Birth Cohort Study Involving Environmental Uranium Exposure in the Navajo Nation—New—Agency for Toxic Substances and Disease Registry (ATSDR) and Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Navajo Nation includes 16 million acres of New Mexico, Utah and Arizona. It is the largest Alaska Native/

American Indian Reservation in the United States. From 1948 to 1986, many uranium mining and milling operations took place in the Navajo Nation, leaving a large amount of uranium contamination on the reservation. Several studies have reported that uranium mostly damages the kidneys and urinary system. However, there is not much research data on uranium exposure and poor birth and reproductive health outcomes. Research involving prenatal exposure to uranium may help to understand and prevent some unfavorable child and maternal health outcomes.

There are important health differences concerning birth outcomes and prenatal care in the Navajo Nation. According to the Indian Health Service *Regional Differences in Indian Health 2002–2003 Edition,* the infant death rate among the Navajo people is 8.5 deaths per 1000 live births, compared to 6.9 deaths per 1000 live births among all races. Only 61% of Navajo mothers with live births received prenatal care in the first trimester as compared to 83% of all US mothers. Early and regular prenatal care is a major predicator of positive birth outcomes. Due to the health differences in birth outcomes and the chance for environmental uranium exposure in the Navajo Nation, ATSDR decided that the upcoming study must include education of women and their families about the importance of prenatal care and the potential poor health risks associated with exposure to uranium.

The House Committee on Oversight and Government Reform requested that federal agencies develop a plan to address health and environmental impacts of uranium contamination in the Navajo Nation. As a result of this request, ATSDR awarded a research cooperative agreement to University of New Mexico Community Environmental Health Program (UNM–CEHP) entitled ''A Prospective Birth Cohort Study Involving Environmental Uranium Exposure in the Navajo Nation (U01),'' in August 2010. ATSDR and UNM–CEHP are working with the Navajo Area Indian Health Service (NAIHS), Navajo Nation Division of Health (NNDOH), Navajo Nation Environmental Protection Agency (NNEPA), and Navajo culture and language specialists to carry out the study. The study will examine reproductive outcomes in pregnant women, follow and assess their children from birth to 1 year of age, and create a system to follow up the infants through childhood up to 6 years of age to evaluate the impact of uranium exposure on biological and psychosocial endpoints. Biological sample analysis, surveys, and developmental screenings will be performed during this research period for each participant.

In addition to investigating the role of uranium and other chemicals in the environment on birth outcomes and development, the prospective study may aid in understanding causes and prevention measures of chronic conditions. Several research studies have shown that exposure to chemicals in the environment during prenatal and postnatal periods can affect the development of adult chronic diseases. The study will also provide broad public health benefits for Navajo communities through outreach and education on environmental prenatal risks and early assessment. Referrals will also be provided for known developmental delays.

Participants will include Native American mothers from age 14 to 45 with verification of pregnancy who have lived in the study area for at least 5 years. Also, participants must consent to receive prenatal care and deliver at one of the healthcare facilities that are taking part in the study (Northern Navajo Medical Center, Chinle Comprehensive Health Care Facility, Gallup Indian Medical Center, Tuba City Regional Health-Care Corporation, or Tséhootsooí Medical Center). Fathers will be included in the study with consent regardless of age or residence. We estimate that 550 pregnant women and fathers per year must be enrolled in the study to obtain adequate statistical power. A 10% pregnancy loss will be assumed, which would result in 500 live births per year. Therefore, the total anticipated sample size is 1,500 mother-infant pairs over the three years of the study.

The data collection instruments for pregnant mothers include the following: Enrollment Survey, Ages and Stages Questionnaire (ASQ–I), Mullen Stages of Early Development (MSEL), Postpartum Surveys (12 month Postpartum survey includes Nutritional Assessment/Food Intake Questionnaire) and Eligibility Form. An enrollment survey for fathers who agree to participate will also be administered. Community Health and Environmental Research Specialists (CHERS) will administer surveys using a CDC-approved electronic data entry system. Survey instruments were designed to collect demographic information, assess potential environmental health risks, and mother-child interactions. The survey instruments were developed based on previous surveys conducted by Dine' Network for Environmental Health (DiNEH) Project, the National Children's Study, and by other birth cohort studies that have been conducted among other indigenous populations. The final format of the survey instruments was modified based on review and input from the Navajo Nation community liaison group and associated Navajo staff to address issues such as cultural sensitivity, comprehension and language translation.

There is no cost to the respondents other than their time to participate in the study. The total estimated annual burden hours are 3596.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden response (hours)
Mother	Enrollment Survey	550	1	120/60
	Ages and Stages Questionnaire (2,6,9,12 months)	500	4	15/60
	Mullen Stages of Early Development	500	1	15/60
	Postpartum Survey (0 months)	500	1	60/60
	Post-partum Survey (2,6,9 months)	500	3	15/60
	Postpartum Survey (12 months)	500	1	15/60
	Eligibility Form	550	1	5/60
Father	Enrollment Survey	550	1	90/60

Dated: March 20, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–7351 Filed 3–26–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0273]

Agency Information Collection Activities; Proposed Collection; Comment Request; Experimental Study of Graphic Cigarette Warning Labels

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 Experimental Study of Graphic Cigarette Warning Labels that is being conducted in support of the graphic label provision of the Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act).

DATES: Submit either electronic or written comments on the collection of information by May 29, 2012.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@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.

Experimental Study of Graphic Cigarette Warning Labels—(OMB Control Number 0910–0668)—Extension

Tobacco products are responsible for more than 400,000 deaths each year. The Centers for Disease Control and Prevention report that approximately 46 million adults smoke cigarettes in the United States, even though this behavior will result in death or disability for half of all regular users. Paralleling this enormous health burden is the economic burden of tobacco use, which is estimated to total $193 billion annually in medical expenditures and lost productivity. Curbing the significant adverse consequences of tobacco use is one of the most important public health goals of our time. One way to do this is through health warnings that describe and graphically depict the harm caused by cigarette use causing individuals to think harder about the choice to use tobacco.

On June 22, 2009, the President signed the Tobacco Control Act (Public Law 111–31) into law. The Tobacco Control Act granted FDA authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors. Section 201 of the Tobacco Control Act, which amends section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333), requires FDA to issue ''regulations that require color graphics depicting the negative health consequences of smoking to accompany the label statements specified in subsection (a)(1).'' FDA conducts research relating to tobacco products under its statutory authority in section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)(C)), as amended by the Tobacco Control Act, to conduct research ''relating to foods, drugs, cosmetics, devices, and tobacco products in carrying out the act.'' The study proposed here is an effort by FDA to collect data concerning graphic warnings on cigarette packages and their impact on consumer perceptions, attitudes, and behavior with respect to smoking.

On June 22, 2011, FDA issued a final rule in the **Federal Register** of June 22, 2011 (76 FR 36628) entitled ''Required Warnings for Cigarette Packages and Advertisements,'' which specified nine graphic images to accompany the new textual warnings for cigarettes. Although the rule was scheduled to become effective 15 months after it issued, a federal district court has permanently enjoined FDA from implementing the rule in its current form. FDA has appealed this decision to the U.S. Court of Appeals of the District of Columbia. FDA expects that the information that FDA proposes to collect will be relevant to FDA's regulation of cigarette warnings no matter the outcome of the current litigation.

The study, the Experimental Study of Graphic Cigarette Warning Labels, is a voluntary annual experimental survey of consumers. The purpose of the study is to assess the effectiveness of various graphic warnings on cigarette packs for achieving three communication goals: (1) Conveying information about various health risks of smoking, (2) encouraging cessation of smoking among current smokers, and (3) discouraging initiation of smoking among youth and former smokers. The study will collect data from various groups of consumers, including current smokers aged 13 years and older, former smokers aged 13 years and older, and non-smokers aged between 13 and 25 years who may be susceptible to initiation of smoking. The

study goals are to: (1) Measure consumer attitudes, beliefs, and intended behaviors related to cigarette smoking in response to graphic warning labels; (2) determine whether consumer responses to graphic warning labels differ across various groups based on smoking status, age, or other demographic variables; and (3) evaluate the relative effectiveness of various graphic images associated with each of the nine warning statements specified in the Tobacco Control Act for achieving each of the communication goals. The information collected from the study is necessary to inform the Agency's efforts to implement the mandatory graphic warnings required by the Tobacco Control Act.

The experimental study data will be collected from participants of an Internet panel of approximately 43,000 people. Participation in the experimental study is voluntary.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Portion of study	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pretest	60	1	60	0.5	30
Screener	15,000	1	15,000	0.016	240
Experimental Survey	5,400	1	5,400	0.5	2,700
Total					2,970

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

FDA's burden estimate is based on prior experience with Internet panel experiments similar to the study proposed here. Sixty panel members will take part in a pretest of the study, estimated to last 30 minutes (0.5 hours), for a total of 30 hours. Approximately 15,000 respondents will complete a screener to determine eligibility for participation in the study, estimated to take 1 minute (0.016 hours), for a total of 240 hours. Fifty-four hundred respondents will complete the full study, estimated to last 30 minutes, for a total of 2,700 hours. The total estimated burden is 2,970 hours (30 hours plus 240 hours plus 2,700 hours).

Dated: March 21, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–7289 Filed 3–26–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Development of Animal Models of Pregnancy To Address Medical Countermeasures for Influenza in the ''At Risk'' Population of Pregnant Women: Influenza as a Case Study; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration's (FDA) Center for Drug Evaluation and Research and FDA's National Center for Toxicological Research are announcing a 2-day public workshop entitled ''Development of Animal Models of Pregnancy To Address Medical Countermeasures for Influenza in the 'At Risk' Population of Pregnant Women: Influenza as a Case Study.'' The purpose of this workshop is to provide a forum to carefully consider scientific issues related to selecting animal models for use in evaluating medical influenza countermeasures (anti-influenza drugs) that may be given during pregnancy. Specifically, this workshop will address experimental design issues in selecting the most appropriate animal model that mimics human pregnancy. The goal is to use this model to evaluate how pregnancy changes the pharmacokinetics of anti-influenza drugs in animals and compare those changes to the changes that are known to occur in human pregnancy. The data obtained from using this model may enhance the knowledge base needed to extrapolate the effects of pregnancy on other medical countermeasures.

DATES: *Date and Time:* The public workshop will be held on April 30, 2012, from 8:30 a.m. to 5 p.m., and on May 1, 2012, from 8:30 a.m. to 5 p.m.

Location: The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Central Shared Use (CSU) Bldg. 2, rm. 2047, Silver Spring, MD 20993–0002. Entrance for the public meeting participants (non-FDA employees) is through Building 1, where routine security check procedures will be performed, a visitor badge will be issued, and an escort will be provided to the meeting room. Government-issued identification will be needed. For additional information on parking and security, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

Contact Person: For questions about the workshop, please contact Cindy de Sales, *cindy@tepgevents.com,* 240–316–3207.

Registration: There is no fee to attend the public workshop, but attendees must register in advance. Space is limited, and registration will be on a first-come, first-served basis. Persons interested in attending this workshop must register online at *http://fda.contractmeetings.com* before April 16, 2012. Non-U.S. citizens are subject to additional security screening, and they should register as soon as possible. For those without Internet access, please contact Cindy de Sales (see *Contact Person*) to register. Onsite registration is not available.

If you need special accommodations due to a disability, please contact Cindy de Sales (see *Contact Person*) at least 7 days in advance.

SUPPLEMENTARY INFORMATION: During seasonal and pandemic influenza outbreaks, pregnant women generally have greater morbidity and mortality than other adults. The data from the 2009 H1N1 influenza pandemic suggested that pregnant women were at increased risk for medical complications. There is limited information regarding the efficacy, pharmacokinetics, optimal dosing, and side effects of anti-influenza drugs that may need to be used during pregnancy. The same is true for most drugs to treat diseases due to other infectious agents.

The anti-influenza drugs have been selected for further study because the influenza virus can infect pregnant women, and oseltamivir, an anti-

influenza drug of the neurominadase inhibitor class, was recommended for treatment of and/or for prophylaxis in pregnant women during the 2009 H1N1 influenza pandemic. In addition, two clinical studies conducted in pregnant women provide some pharmacokinetic data for oseltamivir.

This workshop is open to all interested parties. The target audience includes professionals in the scientific community interested in discussing the challenges of evaluating medical countermeasures for effective and safe use during pregnancy.

The workshop will include plenary and breakout sessions on the scientific challenges in the development of animal models of pregnancy that can be used to address the safety and efficacy of medical countermeasures. Broad topics to be covered in the plenary sessions include: (1) The physiology and pharmacology of pregnancy as it relates to model development; (2) the role of animal models in evaluating medical countermeasures, including influenza therapies, that may be used during pregnancy; and (3) experimental design considerations. Topics of the breakout sessions will include: (1) Animal model selection, (2) design of the pharmacokinetic studies, and (3) additional issues in experimental design.

Background information on the public workshop, registration information, the agenda, and other relevant information will be posted, as it becomes available, on the registration Web site at *http://fda.contractmeetings.com.*

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD. A transcript will also be available in either hard copy or on CD–ROM, after submission of a Freedom of Information request. Send written requests to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. Send faxed requests to 301–827–9267.

Dated: March 21, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–7290 Filed 3–26–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting 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 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 Advisory Environmental Health Sciences Council.

Date: May 22–23, 2012.

Open: May 22, 2012, 8:30 a.m. to 5 p.m.

Agenda: Discussion of program policies and issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Open: May 23, 2012, 8:30 a.m. to 9:30 a.m.

Agenda: Discussion of program policies and issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: May 23, 2012, 9:45 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Gwen W. Collman, Ph.D., Director, Division of Extramural Research & Training, National Institutes of Health, Nat. Inst. of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.niehs.nih.gov/dert/c-agenda.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: March 20, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–7333 Filed 3–26–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Conference Grants.

Date: April 19–20, 2012.

Time: 11 a.m. to 3 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: Chang Sook Kim, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7179, Bethesda, MD 20892–7924, 301–435–0287, *carolko@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Ancilliary Studies in Clinical Trials.

Date: April 20, 2012.
Time: 8 a.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Tony L Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892–7924, 301–435–0725, *creazzotl@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 20, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–7334 Filed 3–26–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Clinical Trial Review.
Date: April 9, 2012.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Helen Lin, Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20817, 301–594–4952, *linh1@mail.nih.gov.*

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Loan Repayment Program.
Date: April 13, 2012.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Charles H. Washabaugh, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20817, 301–594–4952, *washabac@mail.nih.gov.*

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; SBIR Rare Diseases Review.
Date: April 18, 2012.
Time: 1 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Charles N. Rafferty, Ph.D., Chief, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20817, 301–594–5019, *charles.rafferty@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 20, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–7336 Filed 3–26–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2012–0173]

Information Collection Request to Office of Management and Budget

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: 1625–0048, Vessel Reporting Requirements. 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 May 29, 2012.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2012–0173] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of this docket and will be available for inspection or copying at Room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

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–611), ATTN PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2100 2ND ST. SW., STOP 7101, WASHINGTON, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

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–2012–0173], and must be received by May 29, 2012. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2012–0173], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via *http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under ADDRESSES; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2012–0173'' in the ''Keyword'' box. If you submit your comments by mail or delivery, submit them in an unbound format, no larger than 8–1/2 by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0173'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF 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., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received in 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 a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Request

Title: Vessel Reporting Requirements.

OMB Control Number: 1625–0048.

Summary: Owners, Charterers, Managing Operators, or Agents of U.S. vessels must immediately notify the Coast Guard if they believe the vessel may be lost or in danger. The Coast Guard uses this information to investigate the situation and, when necessary, plan appropriate search and rescue operations.

Need: Section 2306(a) of 46 U.S.C. requires the owner, charterer, managing operator, or agent of a vessel of the United States to immediately notify the Coast Guard if: (1) There is reason to believe that the vessel may have been lost or imperiled, or (2) more than 48 hours have passed since last receiving communication from the vessel. These reports must be followed by written confirmation submitted to the Coast Guard within 24 hours. The implementing regulations are contained in 46 CFR part 4.

Forms: None.

Respondents: Businesses or other for profit organizations.

Frequency: On occasion.

Burden Estimate: The estimated annual burden remains 137 hours per year.

Dated: March 20, 2012.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2012–7285 Filed 3–26–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0864]

Certificate of Alternative Compliance for the Research Vessel R/V SIKULIAQ

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the research vessel R/V SIKULIAQ as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternative Compliance was issued on September 9, 2011, and reissued on March 13, 2012.

ADDRESSES: The docket for this notice is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2011–0864 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call

LCDR Wm. Erik Pickering, District Nine, Prevention Branch, U.S. Coast Guard, telephone 216–902–6050. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

A Certificate of Alternative Compliance, as allowed for under 33 U.S.C. 1605(c) and 33 CFR 81.18, has been issued for the research vessel R/V SIKULIAQ, O.N. Pending, Marinette Marine Corporation Hull No. MMC 0650. The vessel's primary purpose is to conduct oceanographic research around the world. The unique design of the vessel did not lend itself to full compliance with 33 CFR 84.05(a) of the Coast Guard's Inland Navigation Rules and Annex I (3(a)) of the Convention on the International Regulations for Preventing Collisions at Sea (1972 and 1981) (COLREGS).

The Commandant, U.S. Coast Guard, certifies that full compliance with the applicable Inland Navigation Rules and COLREGS would interfere with the special functions/intent of the vessel and would not significantly enhance the safety of the vessel's operation. Placing the masthead light in the required position would interfere with the vessel's science and boat/davit operations.

The Certificate of Alternative Compliance authorizes the R/V SIKULIAQ to deviate from the requirements set forth in 33 CFR 84.05(a) and COLREGS Annex I (3(a)), and place its aft masthead light 124.7 feet from the forward masthead light, which is less than half of the ship length (130.75 feet).

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: March 16, 2012.

D.P. Verfaillie,

Captain, U.S. Coast Guard, Chief, Prevention Division, By Direction of the Commander, Ninth Coast Guard District.

[FR Doc. 2012–7338 Filed 3–26–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N–565; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day notice of information collection under review; Form N–565, Application for Replacement Naturalization/Citizenship Document; OMB Control No. 1615–0091.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until May 29, 2012.

During this 60 day period, USCIS will be evaluating whether to revise the Form N–565. Should USCIS decide to revise Form N–565 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form N–565.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *USCISFRComment@dhs.gov*. When submitting comments by email, please make sure to add OMB Control No. 1615–0091 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning the extension of the Form N–565. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at *https://egov.uscis.gov/cris/Dashboard.do*, or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Replacement Naturalization/Citizenship Document.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–565; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households.* Form N–565 is used to apply for a replacement of a Declaration of Intention, Certificate of Citizenship or Replacement Certificate, or to apply for a special certificate of naturalization as a U.S. citizen to be recognized by a foreign country.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 29,298 responses at 55 minutes (0.916) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 26,836 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: March 22, 2012.

Sunday Aigbe,

Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–7299 Filed 3–26–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Revision of an Existing Information Collection, Comment Request

ACTION: 60-Day notice of information collection under review: Form I–9, Employment Eligibility Verification.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 29, 2012.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Office of Policy and Strategy, Sunday Aigbe, Acting Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via email at *uscisfrcomment@dhs.gov.* When submitting comments by email add the OMB Control Number 1615–0047 in the subject box.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Revision of a currently approved information collection.*

(2) *Title of the Form/Collection:* Employment Eligibility Verification.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–9. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Employers, employees, recruiters and referrers for a fee (limited to agricultural associations, agricultural employers, or farm labor contractors), and state employment agencies. This form was developed to facilitate compliance with section 274A of the Immigration and Nationality Act, which prohibits the knowing employment of unauthorized aliens. This information collection is necessary for employers, agricultural recruiters and referrers for a fee, and state employment agencies to verify the identity and employment authorization of individuals hired (or recruited or referred for a fee, if applicable) for employment in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* This figure was derived by multiplying the number of respondents (78,000,000) x frequency of response (1) x hour per response .16 hours (10 minutes). The annual recordkeeping burden is added to the total annual reporting burden which is based on 20,000,000 recordkeepers at .05 hours (3 minutes) per filing.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 13,480,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/fdmspublic/component/main.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529, Telephone number 202–272–8377.

Dated: March 22, 2012.

Sunday Aigbe,

Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–7340 Filed 3–26–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning April 1, 2012, the interest rates for overpayments will be 2 percent for corporations and 3 percent for non-corporations, and the interest rate for underpayments will be 3 percent for both corporations and non-corporations. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

DATES: *Effective Date:* April 1, 2012.

FOR FURTHER INFORMATION CONTACT: Ron Wyman, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614–4516.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2012–8, the IRS determined the rates of interest for the calendar quarter beginning April 1, 2012, and ending on June 30, 2012. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%) for both corporations and non-corporations. For corporate overpayments, the rate is the Federal short-term rate (1%) plus one percentage point (1%) for a total of two percent (2%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%). These interest rates are subject to change for the calendar quarter beginning July 1, 2012, and ending September 30, 2012.

For the convenience of the importing public and Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Under payments (percent)	Over payments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7
010108	033108	7	7	6
040108	063008	6	6	5
070108	093008	5	5	4
100108	123108	6	6	5
010109	033109	5	5	4
040109	123110	4	4	3
010111	033111	3	3	2
040111	093011	4	4	3
100111	063012	3	3	2

Dated: March 21, 2012.

David V. Aguilar,

Acting Commissioner, U.S. Customs and Border Protection.

[FR Doc. 2012–7226 Filed 3–26–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5601–C–10]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.—Correction.

SUMMARY: On March 09, 2012, at 77 FR 14411, HUD published a notice announcing HUD's suitable and unsuitable properties. The New York property (41201210003) was published as unsuitable in error. The correct suitability determination was published on February 17, 2012, at 77 FR 9681, as suitable/available with an ''off-site removal'' requirement. The incorrect listing is below:

Unsuitable Properties

Building

New York

Bldg. 0589
Brookhaven Nat'l Lab
Upton NY 11973
Landholding Agency: Energy
Property Number: 41201210003
Status: Unutilized Comments: national security concerns; no public access and no alternative method
Reasons: Secured Area

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for unsuitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

Dated: March 20, 2012.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2012–7343 Filed 3–26–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5625–N–01]

Notice of FHA Debenture Call

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice announces a debenture call of certain Federal Housing Administration (FHA) debentures in accordance with authority provided in the National Housing Act.

FOR FURTHER INFORMATION CONTACT: Yong Sun, FHA Financial Reporting Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 5148, Washington, DC 20410, telephone 202–402–4778. 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: Pursuant to section 207(j) of the National Housing Act, 12 U.S.C. 1713(j), and in accordance with HUD's regulation at 24 CFR 207.259(e)(3), the Assistant Secretary for Housing—Federal Housing Commissioner, with the approval of the Secretary of the Treasury, announces the call of all FHA debentures, with a coupon rate of 3.125 percent or above, that have been registered on the books of the Bureau of the Public Debt, Department of the Treasury, and are, therefore, ''outstanding'' as of March 31, 2012. The date of the call is July 1, 2012.

The debentures will be redeemed at par plus accrued interest. Interest will cease to accrue on the debentures as of the call date. At redemption, final interest on any called debentures will be paid along with the principal. Payment of final principal and interest due on July 1, 2012, will be made automatically to the registered holder.

During the period from the date of this notice to the call date, debentures that are subject to the call may not be used by the mortgagee for a special redemption purchase in payment of a mortgage insurance premium.

No transfer of debentures covered by the foregoing call will be made on the books maintained by the Treasury Department on or after June 11, 2012. This debenture call does not affect the right of the holder of a debenture to sell or assign the debenture on or after this date.

Dated: February 17, 2012.

Carol J. Galante,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2012–7326 Filed 3–26–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0212–9515; 2280–665]

Government-to-Government Telephonic Consultation Meetings

AGENCY: National Park Service, Interior.

SUMMARY: The National Park Service announces two telephonic government-to-government consultation meetings with Indian tribes that will be held to obtain initial input on issues related to programs of the National Register of Historic Places/National Historic Landmarks Program. The meetings will also provide an opportunity for input into the development of a consultation planning process for future consultation. The meetings are intended for every Indian tribe that the Secretary of the Interior acknowledges pursuant to the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a), and are in accordance with Executive Order 13175—Consultation and Coordination with Indian Tribal Governments (Nov. 6, 2000), the President's Memorandum for the Heads of Executive Departments and Agencies on the implementation of Executive Order 13175 (Nov. 5, 2009), and the Secretary of the Interior's Order No. 3317—Department of the Interior Policy on Consultation With Indian Tribes (Dec. 1, 2011).

DATES: Monday, April 23, 2012, at 1 p.m. to 5 p.m. EDT: Wednesday, May 23, 2012, at 1 p.m. to 5 p.m. EDT.

Location: Telephonic conference.

FOR FURTHER INFORMATION CONTACT: Alexis Abernathy, National Register of Historic Places program, National Park Service; 1849 C Street NW., (2280); Washington, DC 20240; Telephone (202) 354–2236; Email: *Alexis_Abernathy@nps.gov.*

The National Register of Historic Places/National Historic Landmarks Program of the National Park Service (NPS) invites Tribal Officials and/or their tribe's authorized representative(s)

to attend one or both of two government-to-government telephonic consultation meetings that will be held to obtain initial planning-stage recommendations from Indian tribes on:

(1) Updating information contained in the National Register Bulletin, *Guidelines for Evaluating and Documenting Traditional Cultural Properties,*

(2) Developing guidance on identifying and evaluating National Register eligible traditional Native American landscapes, and

(3) Establishing a format and time frame for the balance of a consultation process that would allow NPS to best consider official comments from tribes about how traditional cultural properties and Native American landscapes can be addressed under the authorities of the National Historic Preservation Act.

The meetings are intended for every Indian tribe that the Secretary of the Interior acknowledges pursuant to the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a), and are in accordance with Executive Order 13175—Consultation and Coordination with Indian Tribal Governments (Nov. 6, 2000), the President's Memorandum for the Heads of Executive Departments and Agencies on the implementation of Executive Order 13175 (Nov. 5, 2009), and the Secretary of the Interior's Order No. 3317—Department of the Interior Policy on Consultation With Indian Tribes (Dec. 1, 2011). The first consultation meeting is scheduled for Monday, April 23, 2012, from 1 p.m. until 5 p.m. EDT. The second consultation meeting is scheduled for Wednesday, May 23, 2012, from 1 p.m. to 5 p.m. EDT. Depending on the length of the comments, one or both of these meetings could end earlier.

Those wishing to attend one or both consultations may register in one of three ways:

Registration Option 1 (Preferred Method)

Send an email message containing the following information to *nr_info@nps.gov* with ''TCP Consultation Process'' in the subject line. In the body of the email provide the name, title, tribal affiliation, mailing address, telephone number, and email address for each person who will be listening on the same telephone line. Please also note if you are an authorized tribal representative(s). Email registrants will receive a return email confirmation of their registration, together with information on accessing the consultation meeting. (Email registrants should add *nr_info@nps.gov* to their Contacts list in order to avoid spam filters.)

Registration Option 2

Fax a message to Alexis Abernathy at 202–371–2229 at the National Register Program Office in Washington, DC, with ''TCP Consultation Process'' in the subject line. Faxed information should include the name and return fax number of the authorized tribal representative submitting the registration as well as the name, title, tribal affiliation, mailing address, telephone number, and email address for each person who will be listening on the same telephone line.

Registration Option 3

Contact Alexis Abernathy at the National Register Program Office in Washington, DC, by telephone at 202–354–2236 and leave a message containing the name of the authorized tribal representative making the call along with the name, title, tribal affiliation, mailing address, telephone number, and email address for each person who will be participating in the conference on the same telephone line. Tribes registering via telephone will be mailed confirmation of their registration together with information on accessing the consultation meeting.

Authorized representatives of tribal governments who wish to speak at the telephonic consultation meetings should indicate their wish to do so when they register to attend the meetings, and also should identify the Indian tribe on whose behalf they intend to speak. Tribes may comment on any or all of the agenda items.

Registrations for the April 23, 2012, consultation meeting must be received no later than Monday, April 2, 2012. Registrations for the May 23, 2012, consultation meeting must be received no later than Monday, May 7, 2012.

Notice of two meetings will also be posted on the National Register Program's Web site at *www.nps.gov/nr*.

Questions regarding either the April 23 or May 23 government-to-government consultation meetings should be directed to program coordinator Alexis Abernathy at (202) 354–2236 or *nr_info@nps.gov*.

The National Register/National Historic Landmarks Program looks forward to hearing comments on these issues.

J. Paul Loether,

Chief, National Register/National Historic Landmarks Program, National Park Service.

[FR Doc. 2012–7261 Filed 3–26–12; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0312–9795; 2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before March 3, 2012. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by April 11, 2012. 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.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ARIZONA

Pima County

Arivaca Schoolhouse, 17180 W. 4th St., Arivaca, 12000199

COLORADO

Jefferson County

Golden Cemetery, 755 Ulysses St., Golden, 12000200

Pueblo County

First Methodist Episcopal Church, 310 W. 11th St., Pueblo, 12000201

KANSAS

Butler County

Viets Block, 427, 429, & 431 State St., Augusta, 12000202

Dickinson County

ATSF Steam Locomotive No. 3415, 411 S. Elm St., Abilene, 12000203

Geary County

Jackson—McConnell House, 228 W. 5th St., Junction City, 12000204

MASSACHUSETTS

Berkshire County

Old Churchyard Cemetery, Adjacent to 918 Jenks Rd., Cheshire, 12000206

MISSOURI

Jackson County

Twenty—Twenty Grand Building, (Railroad Related Historic Commercial and Industrial Resources in Kansas City, Missouri MPS) 2008–2020 Grand Blvd., Kansas City, 12000205

St. Louis Independent City

Shaw's Garden Historic District, Roughly bounded by DeTonty, Tower Grove, Shaw, Alfred, Magnolia, Kingshighway, & Vandeventer Aves., St. Louis (Independent City), 12000207

NEW JERSEY

Hunterdon County

Kalmia Club, The, (Clubhouses of New Jersey Women's Clubs MPS) 39 York St., Lambertville, 12000208

Somerset County

North Branch Historic District, Easton Tpk., Vanderveer Ave., Burnt Mills, & Station Rds. (Branchburg Township), North Branch, 12000209

NEW YORK

Montgomery County

Reaney, Margaret, Memorial Library, 19 Kingsbury Ave., St. Johnsville, 12000210

Washington County

Hebron District School No. 16, NY 22, East Hebron, 12000211

Wyoming County

Perry Downtown Historic District, N. & S. Main, Covington, & Lake Sts., Borden Ave., Perry, 12000212

NORTH CAROLINA

Bertie County

Lee, William H., House, 246 Farm Rd., Lewiston, 12000213

Mitchell County

Penland Post Office and General Store, 1162 Penland Rd., Penland, 12000214

Northampton County

Gaston School, 200 School St., Gaston, 12000215

Robeson County

Robeson County Agricultural Building, 108 W. 8th St., Lumberton, 12000216

Surry County

Atkinson, Samuel Josiah, House, 586 Atkinson Rd., Siloam, 12000217

Wake County

Page, Williamson, House, 116 S. Page St., Morrisville, 12000218

PENNSYLVANIA

Allegheny County

Cavalry Episcopal Church, 315 Shady Ave., Pittsburgh, 12000219

Chester County

Phoenixville Historic District (Boundary Decrease), High, Dayton, Railroad, Vanderslice, Bridge, & N. Main Sts., Wheatland & French Cr., Phoenixville, 12000220

Lackawanna County

Scranton Lace Company, 1315 Meylert St., Scranton, 12000221

Luzerne County

Hazelton High School, (Educational Resources of Pennsylvania MPS) 700 N. Wyoming St., Hazelton, 12000222

Philadelphia County

Wayne Junction Historic District, Roughly bounded by W. Berkley St., Roberts, Germantown, & Wayne Aves., Philadelphia, 12000223

Tioga County

Parkhurst Memorial Presbyterian Church, 302 W. Main St., Elkland, 12000224

WEST VIRGINIA

Upshur County

Buckhannon Central Residential Historical District, Roughly bounded by College Ave., S. Kanawha, Madison, & E. Main Sts., Buckhannon, 12000225

A request to move has been made for the following resources:

UTAH

Weber County

Goodyear, Miles, Cabin, Tabernacle Sq., Ogden, 71000866

Weber Stake Relief Society Building, 2148 Grant Ave., Ogden, 88003438

[FR Doc. 2012–7262 Filed 3–26–12; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Outer Continental Shelf (OCS), Alaska OCS Region, Cook Inlet Planning Area, Proposed Oil and Gas Lease Sale 244 for OCS Oil and Gas Leasing Program 2012–2017

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Request for Interest (RFI).

SUMMARY: The Proposed OCS Oil and Gas Leasing Program for 2012–2017 (Proposed Program) identifies Sale 244 as a potential special interest sale for the Cook Inlet Planning Area in Alaska. While industry interest in the Federal OCS offshore area has been limited in the past decade, recently there has been renewed interest in exploring for and developing additional hydrocarbon resources in the south-central region of the state, as evidenced by acreage leased in state sales and announced discoveries of natural gas on state-managed lands, both offshore and onshore.

This RFI seeks to determine the level of industry interest in a possible Sale 244 in 2013 in the Cook Inlet Planning Area, whether focused on a few blocks or prospects, or on a larger portion of the program area.

BOEM is also seeking comments from tribal, local, and state governments, Federal agencies, and the general public to evaluate whether the agency should proceed with further evaluations pursuant to the OCS Lands Act (OCSLA), the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and all other applicable laws and regulations. BOEM will consider the level of industry interest and other issues and concerns reflected in comments in its determination on how to proceed. BOEM will then decide on whether to proceed with further evaluation of this special interest sale. This RFI does not indicate a decision to include Sale 244 in the Proposed Final OCS Oil and Gas Leasing Program for 2012–2017 (Final Program) or to lease in the Cook Inlet Planning Area.

DATES: All responses to the RFI on proposed Cook Inlet Sale 244 must be received no later than May 11, 2012. Written nomination submittals should be labeled ''Comments on Proposed Special Interest Sale 244.''

FOR FURTHER INFORMATION CONTACT: Fred King, Chief, Leasing Section, Leasing and Plans, BOEM, Alaska OCS Region, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503–5823, or at (907) 334–5271.

SUPPLEMENTARY INFORMATION:

Request for Interest and Information

1. *Authority:* This RFI is published pursuant to the OCSLA, as amended (43 U.S.C. 1331–1356 (1994)) and the regulations issued thereunder (30 CFR Part 556) and in accordance with the Proposed Program.

Due to the long lead time necessary to prepare for a sale, this RFI is being published before a final decision is made later in 2012 on which sales will be included in the Final Program. This proposed sale was included in the Proposed Program with a sale date tentatively scheduled for late 2013. If the Final Program includes proposed Cook Inlet Sale 244, BOEM will continue to prepare for the sale, and the final decision to hold or cancel the sale will likely be made in late 2013 as part

of the sale preparation process. If the Final Program does not include this sale, then BOEM will terminate preparations for the sale.

2. *Purpose of RFI:* This RFI seeks to determine the level of industry interest and whether that interest, if any, is focused on a few blocks or prospects or on a larger portion of the program area. BOEM is also seeking comments from tribal, local, and state governments, Federal agencies, and the general public to determine whether BOEM should proceed with further evaluations pursuant to the OCSLA, NEPA, ESA, and other applicable laws and regulations.

This information-gathering step is important to ensure that all pertinent information is assessed in determining whether to proceed with further evaluation of the special interest leasing process pursuant to the OCSLA and regulations at 30 CFR Part 556. A special interest leasing option allows BOEM to consider for further evaluation a very focused or larger area of the Cook Inlet Planning Area, depending on interest. This RFI does not indicate a decision to include Sale 244 in the Final Program or to lease in the Cook Inlet area described below.

After the 45-day RFI comment period closes, BOEM will decide whether to continue the process after consideration of the nomination information and comments received. If industry response to this RFI does not indicate sufficient interest at this time, then preparations for Sale 244 will not proceed. BOEM may issue another RFI subsequently to gauge industry interest in a potential lease sale in the Cook Inlet Planning Area later in the Proposed Program.

If sufficient industry interest is received during the RFI process, including nominations of specific blocks in response to the RFI, and after reviewing and considering the other information provided, BOEM may recommend to the Assistant Secretary—Land and Minerals Management, that the sale process should continue, as well as the size of the area to be considered for further evaluation in the process referred to as Area Identification. Following Area Identification, the BOEM Alaska Region will prepare the appropriate NEPA analysis of potential environmental effects of oil and gas leasing, exploration, development, and production in the proposed sale area and its vicinity. After the completion of the NEPA process and consultation with the Governor of Alaska, if BOEM determines that leasing and potential exploration can occur in an environmentally safe manner, then BOEM may proceed with the leasing process for a competitive sale in the general area of interest.

Sale 244 is tentatively scheduled for late 2013 under the Proposed Program. BOEM is starting the RFI process now to allow sufficient time to complete all of the steps in the presale process to hold a sale in 2013, in the event that the decision is made to proceed with a potential lease sale in the Cook Inlet Planning Area. As explained above, issuance of this RFI does not indicate a decision to lease in the Cook Inlet Planning Area.

3. *Background and Description of the Area:* Five Federal OCS sales have been held in the Cook Inlet Planning Area within the past 34 years. In October 1977, Sale CI resulted in 88 leases being issued. In September 1981, Sale 60 resulted in 13 leases being issued. A re-offering sale, Sale RS–2, was held in August 1982, but no bids were received and no leases resulted from this sale. Sale 149, held in June 1997, resulted in 2 leases issued. Sale 191 was held in May 2004, and no bids were submitted. Two special interest Cook Inlet Sales, 211 and 219, were scheduled under the 2007–2012 Program. On July 8, 2008, the Minerals Management Service (now BOEM) issued a RFI for Cook Inlet Sale 211. The comment period closed October 6, 2008. MMS received three comments, but no industry nominations identifying specific leasing interest. In 2008, MMS decided not to proceed with the Sale 211 presale process. On March 2, 2011, the decision to cancel Sale 219 was published in the **Federal Register**. Between 1978 and 1985, a total of 13 exploratory wells were drilled on Federal leases in the Cook Inlet Planning Area, all have been permanently plugged and abandoned. The State of Alaska currently has active oil and gas leases with two drill operations preparing for the 2012 drill season. Companies have purchased leases offshore at the State-held Cook Inlet Sale in June 2011. The most recent State oil and gas lease sale held in December 2011 included 575,202 acres. There are currently no active Federal OCS leases in Cook Inlet.

The BOEM document ''Assessment of Undiscovered Technically Recoverable Oil and Gas Resources of the Nation's Outer Continental Shelf, 2011'' estimates the mean undiscovered conventionally recoverable resources for the Cook Inlet Planning Area at 1.01 billion barrels of oil and 1.2 trillion cubic feet of gas (*http://www.boem.gov/uploadedFiles/2011_National_Assessment_Factsheet.pdf*).

The Cook Inlet Planning Area is located offshore the State of Alaska just south of Kalgin Island and the Barren Islands and continues south through Shelikof Strait to just above the southern tip of Kodiak Island (see map below). The Cook Inlet Planning Area consists of approximately 1,093 whole and partial blocks covering about 2.1 million hectares (about 5.3 million acres). It extends from 3 to approximately 60 nautical miles offshore, in water depths from about 30 feet to approximately 650 feet. A map of the Cook Inlet Planning Area accompanies this RFI. A large-scale RFI map showing the boundaries of the Cook Inlet Planning Area on a block-by-block basis is available on the BOEM Web site at *http://www.boem.gov/aksale244.*

4. *Instructions on RFI:* If a company is interested in potentially acquiring oil and gas leases in the Cook Inlet Planning Area, it should send specific written nomination information to: Chief, Leasing Section, BOEM, Alaska OCS Region, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503–5823. Written nominations must be received by May 11, 2012. The written information from industry nominating specific blocks, which BOEM considers proprietary, will not be released to the public. If a company believes that a larger area should be considered, it should explicitly describe its interest, including a summary of the geologic and economic information about that larger area. To avoid inadvertent release of proprietary information, please mark all documents ''Confidential—Contains Proprietary Information'' on every page containing such information. This written letter of nomination may include maps, and should include a company contact name, address, and phone number(s) that BOEM can use if it needs additional information or clarification. Submittals should indicate ''Responses to RFI for Proposed Cook Inlet Special Interest Lease Sale 244.''

Respondents should rank areas they have nominated according to priority of interest; for example, priority 1 (high), 2 (medium), and/or 3 (low) on a large-sale RFI map available at *http://www.boem.gov/aksale244.* Respondents are encouraged to be specific in indicating blocks by priority and be prepared to discuss their range of interest and activity regarding the nominated area(s). Please provide the telephone number and name of a person to contact in the organization's response. BOEM's Alaska OCS Regional office may contact this person to set up a mutually agreeable meeting to more fully review the company's level of interest.

BOEM is seeking comments and information from all interested parties about particular geological (including natural hazard areas), environmental, biological, archaeological, and socioeconomic conditions or potential conflicts, or other information that might bear upon the potential leasing, exploration, and development in the program area and its vicinity. Except for written letters of nomination, all other comments to the RFI, including general information from companies, federal agencies, state and local governments, tribes and other interested parties and individuals will be accepted only through *http://www.regulations.gov,* using docket designation: BOEM–2012–0017. All comments received via regulations.gov, including names and addresses of respondents, are public and will be posted for public review on regulations.gov.

BOEM will not consider anonymous comments. BOEM will make available in their entirety on regulations.gov all non-proprietary submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses. All written nomination information submitted by industry about their interest will remain proprietary and will not be released.

5. *Use of RFI Information:* Information submitted in response to this RFI will be used for several purposes. Responses will be used to:

—Determine whether to proceed with the leasing process for a special-interest oil and gas lease sale in the Cook Inlet Planning Area;
—Identify specific areas of interest for oil and/or gas leasing, exploration, and development;
—Identify potential environmental effects and potential use conflicts;
—Develop the appropriate level of environmental analysis, if the level of industry interest is such that BOEM recommends proceeding with the special interest sale process;
—Develop lease terms, conditions, and mitigating measures.

6. *Existing Information:* An extensive environmental, social, and economic Studies Program has been underway in the Alaska OCS Region since 1976, including studies in the Cook Inlet Planning Area. The emphasis has been on environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, subsistence uses, and ecological and socio-cultural effects of oil and gas activities. NEPA analyses were prepared for the previous OCS sales held in the Cook Inlet Planning Area.

Information on the BOEM Environmental Studies Program, completed studies, and a program status report for continuing studies in this area is available on the BOEM Web site *http://www.boem.gov/akstudies,* or may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, by telephone request at (907) 334–5283.

Dated: March 6, 2012.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

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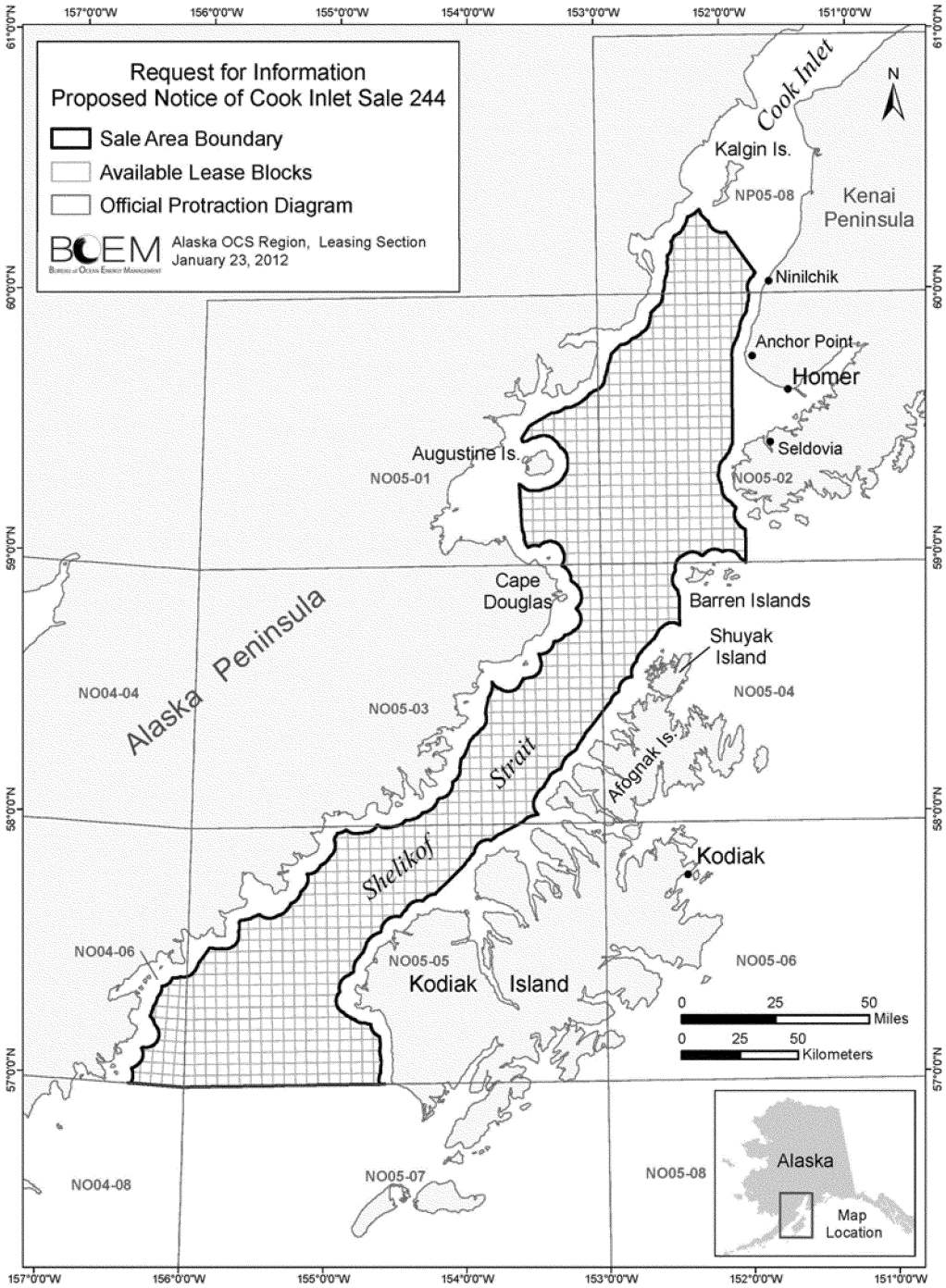
Attachment 1



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[FR Doc. 2012–7337 Filed 3–26–12; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

Environmental Documents Prepared for Proposed Oil, Gas, and Mineral Operations by the Gulf of Mexico Outer Continental Shelf (OCS) Region

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of the availability of Environmental Documents Prepared for OCS Mineral Proposals by the Gulf of Mexico OCS Region.

SUMMARY: The Bureau of Ocean Energy Management (BOEM), in accordance with Federal Regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments

(SEA) and Findings of No Significant Impact (FONSI), prepared by BOEM for the following oil-, gas-, and mineral-related activities proposed on the Gulf of Mexico.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below. Bureau of Ocean Energy Management, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 250, New Orleans, Louisiana 70123–2394, or by calling 1–800–200–GULF.

SUPPLEMENTARY INFORMATION: The BOEM prepares SEAs and FONSIs for proposals that relate to exploration, development, production, and transport of oil, gas, and mineral resources on the Federal OCS. These SEAs examine the potential environmental effects of activities described in the proposals and present BOEM conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes a major Federal action that significantly affects the quality of the human environment in accordance with NEPA Section 102(2)(C). A FONSI is prepared in those instances where BOEM finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the SEA. This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Activity/operator	Location	Date
Shell Offshore Inc., Exploration Plan, SEA R–5298	Located in the Western Planning Area, south of Galveston, Texas.	10/4/2011.
Prime Offshore L.L.C., Structure Removal, SEA ES/SR 11–285	South Padre Island, Block 1113, Lease OCS–G 24302, located 20 miles from the nearest Texas shoreline.	10/12/2011.
Apache Corporation, Structure Removal, SEA ES/SR 11–152	South Timbalier, Block 291, Lease OCS–G 16455, located 90 miles from the nearest Louisiana shoreline.	10/12/2011.
BP Exploration & Production Inc., Exploration Plan, SEA S–7451.	Keathley Canyon, Block 292, located 192 miles from the nearest shoreline in Terrebonne Parish, Louisiana, southeast of Morgan City, Louisiana.	10/14/2011.
Prime Offshore L.L.C., Structure Removal, SEA ES/SR 11–280 & 11–281.	South Padre Island, Block 1073, Lease OCS–G 23102, located 23 miles from the nearest Texas shoreline.	10/14/2011.
Prime Offshore L.L.C., Structure Removal, SEA ES/SR 11–284	South Padre Island, Block 1166, Lease OCS–G 24307, located 15 miles from the nearest Texas shoreline.	10/14/2011.
Prime Offshore L.L.C., Structure Removal, SEA ES/SR 11–282 & 11–283.	South Padre Island, Block 1133, Lease OCS–G 26431, located 13 miles from the nearest Texas shoreline.	10/17/2011.
McMoRan Oil & Gas LLC, Structure Removal, SEA ES/SR 06–105A.	Main Pass, Block 138, Lease OCS–G 16500, located 15 miles from the nearest Louisiana shoreline.	10/18/2011.
Chevron U.S.A. Inc., Exploration Plan, SEA S–7478	Walker Ridge, Block 29, located 145 miles from the nearest Louisiana shoreline, south of Port Fourchon, Louisiana.	10/18/2011.
W & T Offshore, Inc., Structure Removal, SEA ES/SR 11–242 & 11–243.	Eugene Island, Block 196, Lease OCS–G 13821, located 48 miles from the nearest Louisiana shoreline.	10/19/2011.
Woodside Energy (USA) Inc., Exploration Plan, SEA R–5105	Green Canyon, Block 451, located east of Brownsville, Texas, 109 miles from the nearest Texas shoreline.	10/19/2011.
W & T Offshore, Inc., Structure Removal, SEA ES/SR 11–270	Ship Shoal, Block 33, Lease OCS 00336, located 11 miles from the nearest Louisiana shoreline.	10/19/2011.
Noble Energy, Inc., Exploration Plan, SEA R–5348	Green Canyon, Blocks 678, 679, 680, 722, 723, 724, 725, 766, 767 and 768, located greater than 125 miles from the Louisiana shoreline, south of Morgan City, Louisiana.	10/20/2011.
Century Exploration New Orleans, Inc., Structure Removal, SEA ES/SR 11–289.	Ship Shoal, Block 154, Lease OCS 00420 located 36 miles from the nearest Louisiana shoreline.	10/20/2011.
Prime Offshore L.L.C., Structure Removal, SEA ES/SR 11–279	South Padre Island, Block 1059, Lease OCS–G 23100, located 32 miles from the nearest Texas shoreline.	10/20/2011.
Chevron U.S.A. Inc., Development Operations Coordination Document, SEA R–5101.	Located south of Port Fourchon, Louisiana. 118 miles from the nearest Louisiana shoreline.	10/24/2011.
Maritech Resources, Inc., Structure Removal, SEA ES/SR 11–053 & 11–054.	Eugene Island, Block 129, Lease RUE OCS–G 30029, located 38 miles from the nearest Louisiana shoreline.	10/26/2011.
Apache Corporation, Structure Removal, SEA ES/SR 08–011A	Eugene Island, Block 306, Lease OCS–G 02109, located 75 miles from the nearest Louisiana shoreline.	10/26/2011.
W & T Offshore, Inc., Structure Removal, SEA ES/SR 11–237	Main Pass, Block 102, Lease OCS–G 03798, located 58 miles from the nearest Louisiana shoreline.	10/26/2011.
Dynamic Data Services Inc., Geological & Geophysical Survey, SEA L11–013.	Located in the Western, Central, and Eastern Gulf of Mexico Planning Areas.	10/27/2011.
LLOG Exploration Offshore, L.L.C., Exploration Plan, SEA N–9504.	Located south of Grand Isle, Lafourche Parish, Louisiana, 56 miles from the nearest Louisiana shoreline.	10/27/2011.
Stone Energy Corporation, Structure Removal, SEA ES/SR 11–286 & 11–291.	West Delta, Block 97, Lease OCS–G 08457, located 23 miles from the nearest Louisiana shoreline.	10/31/2011.
Stone Energy Corporation, Structure Removal, SEA ES/SR 11–287.	West Delta, Block 98, Lease OCS–G 21129, located 20 miles from the nearest Louisiana shoreline.	10/31/2011.
Noble Energy, Inc., Exploration Plan, SEA R–5205	Mississippi Canyon, Block 699, south of Mobile, Alabama, located 82 miles from the nearest shoreline in Plaquemines Parish, Louisiana.	11/1/2011.
Shell Offshore Inc., Exploration Plan, SEA S–7498	Garden Banks, Block 427, south of Terrebonne Parish, Louisiana, located 134 miles from the nearest Louisiana shoreline.	11/2/2011.

Activity/operator	Location	Date
Apache Deepwater LLC, Exploration Plan, SEA N–9583	Green Canyon, Blocks 823 and 867, south of Port Fourchon, Louisiana, located 130 miles from the nearest Louisiana shoreline.	11/3/2011.
Murphy Exploration & Production Company—USA, Exploration Plan, SEA S–7485.	Located south of Mobile, Alabama, 74 miles from the nearest Louisiana shoreline.	11/4/2011.
Anadarko Petroleum Corporation, Development Operations Coordination Document, SEA N–9482.	Located southeast of Plaquemines Parish, Louisiana, 130 miles from the nearest Louisiana shoreline.	11/4/2011.
Chevron U.S.A. Inc., Structure Removal, SEA ES/SR 08–028A	South Timbalier, Block 151, Lease OCS 00463, located 32 miles from the nearest Louisiana shoreline.	11/4/2011.
JX Nippon Oil Exploration (U.S.A.) Limited, Structure Removal, SEA ES/SR 11–227.	West Cameron, Block 533, Lease OCS–G 02225, located 95 miles from the nearest Louisiana shoreline.	11/7/2011.
Global Geophysical Services, Inc., Geological and Geophysical Survey, SEA L11–015.	Located in the Eugene Island Area, in the Central Planning Area, of the Gulf of Mexico, 30 miles from the nearest Louisiana shoreline.	11/8/2011.
TGS–NOPEC Geophysical Company, Geological & Geophysical Survey, SEA L11–007.	Located in the Central Planning Area of the Gulf of Mexico	11/10/2011.
ATP Oil & Gas Corporation, Exploration Plan, SEA N–9577	Mississippi Canyon, Block 710, Lease OCS–G 22896, located 48 miles from the nearest Louisiana shoreline.	11/10/2011.
BHP Billiton Petroleum (GOM) Inc., Development Operations Coordination Document, SEA S–7487.	Located south of Port Fourchon, Lafourche Parish, Louisiana, 117 miles from the nearest Louisiana shoreline.	11/15/2011.
Anadarko Petroleum Corporation, Exploration Plan, SEA N–9593.	Keathley Canyon, Block 875, located 214 miles from the nearest Louisiana shoreline, south of Intracoastal City, Vermillion Parish, Louisiana.	11/17/2011.
Newfield Exploration Company, Exploration Plan, SEA N–9586	Located south of Mobile, Alabama, 62 miles from the nearest shoreline, south of Venice, Louisiana.	11/18/2011.
Shell Offshore Inc., Exploration Plan, SEA S–7499	Mississippi Canyon, Block 807, located 53 miles from the nearest Louisiana shoreline, southeast of Port Fourchon, Louisiana.	11/18/2011.
Exxon Mobil Corporation, Exploration Plan, SEA R–5296	Keathley Canyon, Block 919, Lease OCS–G 21447, located 236 miles from the nearest Louisiana shoreline, south-southwest of Port Fourchon, Louisiana.	11/21/2011.
Anadarko Petroleum Corporation, Exploration Plan, SEA N–9591.	East Breaks, Block 646, located 118 miles from the nearest Texas shoreline, south of Galveston, Texas.	11/23/2011.
Wild Well Control, Inc., Structure Removal, SEA ES/SR 11–223.	Grand Isle, Block 47, Lease OCS–00133, located 18 miles from the nearest Louisiana shoreline.	11/30/2011.
EOG Resources, Inc., Structure Removal, SEA ES/SR 11–278	Mustang Island, Block 759, Lease OCS–G 14103, located 32 miles from the nearest Texas shoreline.	11/30/2011.
Eni US Operating Co. Inc., Structure Removal, SEA ES/SR 11–290.	West Cameron, Block 225, Lease OCS–G 00900, located 39 miles from the nearest Louisiana shoreline.	11/30/2011.
Fugro Multi Client Services, Inc., Geological & Geophysical Survey, SEA L11–018.	Located in the Central Planning Area of the Gulf of Mexico, south of Louisiana.	12/1/2011.
TDI–Brooks International, Inc., Geological & Geophysical Survey, SEA L11–019.	Located in the Central Gulf of Mexico	12/2/2011.
Shell Offshore, Inc., Exploration Plan, SEA S–7514	Walker Ridge, Block 508, located 178 miles from the nearest Louisiana shoreline, south of Terrebonne Parish, Louisiana.	12/13/2011.
Walter Oil & Gas Corporation, Exploration Plan, SEA R–5382	Ewing Bank, Block 834, located 63 miles from the nearest Louisiana shoreline, south of Terrebonne Parish, Louisiana.	12/15/2011.
Transcontinental Gas Pipe Line Company, LLC, Structure Removal, SEA ES/SR 11–267.	Vermilion, Block 76, Right-Of-Way Lease No. 00647, located 18 miles from the nearest Louisiana shoreline.	12/19/2011.
Apache Corporation, Structure Removal, SEA ES/SR 11–154	Eugene Island, Block 306, Lease OCS–G 02109, located 75 miles from the nearest Louisiana shoreline.	12/20/2011.
Walter Oil & Gas Corporation, Exploration Plan, SEA R–5404	Eugene Island, Block 51, located 63 miles from the nearest Louisiana shoreline, south of Terrebonne Parish, Louisiana.	12/20/2011.
Maritech Resources, Inc., Structure Removal, SEA ES/SR 11–238.	High Island, Block 325A, Lease OCS–G 02416, located 120 miles from the nearest Texas shoreline.	12/20/2011.
Maritech Resources, Inc., Structure Removal, SEA ES/SR 11–288.	High Island, Block A 560, Lease OCS–G 14193, located 76 miles from the nearest Texas shoreline.	12/22/2011.
Apache Corporation, Structure Removal, SEA ES/SR 11–036A	Matagorda Island, Block 696, Lease OCS–G 04704, located 1 mile from the nearest Texas shoreline.	12/22/2011.
Anadarko Petroleum Corporation, Exploration Plan, SEA S–7509.	Green Canyon, Block 727, located 122 miles from the nearest Louisiana shoreline, in Terrebonne Parish, Louisiana, southwest of Grand Isle, Louisiana.	12/23/2011.
Anadarko Petroleum Corporation, Exploration Plan, SEA N–9610.	Located south of Iberia, Louisiana, 223 miles from the nearest Louisiana shoreline, in Terrebonne Parish, Louisiana.	12/27/2011.
Chevron U.S.A. Inc., Exploration Plan, SEA R–5299	Keathley Canyon, Block 736, located 210 miles of the nearest Louisiana shoreline, southwest of Port Fourchon, Louisiana.	12/29/2011.
LLOG Exploration Offshore, L.L.C., Exploration Plan, SEA S–7526.	Located in the Central Planning Area of the Gulf of Mexico, southeast of New Orleans, Louisiana, 60 miles from the nearest Louisiana shoreline.	12/29/2011.
Apache Corporation, Structure Removal, SEA ES/SR 11–071	North Padre Island, Block 892, Lease OCS–G 08958, located 31 miles from the nearest Texas shoreline.	12/29/2011.

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about SEAs and FONSIs prepared by the Gulf of Mexico OCS Region are encouraged to contact BOEM at the address or telephone listed in the **FOR FURTHER INFORMATION CONTACT** section.

Dated: February 3, 2012.

John Rodi,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 2012–7364 Filed 3–26–12; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–865–867 (Second Review)]

Stainless Steel Butt-Weld Pipe Fittings From Italy, Malaysia, and the Philippines; Revised Schedule for the Subject Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: *Effective Date:* March 21, 2012.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On February 6, 2012, the Commission established a schedule for the conduct of the expedited subject five-year reviews (77 FR 10773, February 23, 2012). The Commission is revising its schedule.

The Commission's new schedule for the reviews is as follows: the staff report will be placed in the nonpublic record on May 25, 2012; and, comments are due on or before May 30, 2012.

For further information concerning these reviews see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: March 21, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–7286 Filed 3–26–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Resource Conservation and Recovery Act and Clean Air Act

Notice is hereby given that on March 19, 2012, a Consent Decree in *U.S.* v. *Government of the Virgin Islands, et al.,* Civil Action No. 3:10–cv–48 was lodged with the United States District Court for the District of the Virgin Islands.

In this action the United States sought, among other things, injunctive relief and civil penalties for the failure by the Government of the Virgin Islands (''GVI'') and the Virgin Islands Waste Management Authority (''WMA'') to operate the Bovoni Landfill on St. Thomas in compliance with the Resource Conservation and Recovery Act (''RCRA'') and the Clean Air Act (''CAA''). The proposed Consent Decree provides for the GVI and WMA to: (a) Operate and maintain the landfill in accordance with RCRA; (b) upgrade an existing CAA-required landfill gas collection and control system and operate and maintain the system; (c) install and operate a leachate collection system; (d) construct and operate a storm water runoff collection system; (e) remove and dispose of scrap tires adjacent to the landfill; (d) implement phased closure of the landfill beginning in 2014; (f) implement a waste diversion/recycling program; and (g) pay a civil penalty of $50,000.

The Department of Justice will receive comments relating to the Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcommentees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *U.S.* v. *Government of the Virgin Islands, et al.,* D.J. Ref. 90–5–2–1–08776. Commenters may request that a public meeting be held in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d). If a public meeting is requested, information concerning the time and place of the meeting will be provided in advance in the local media.

During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*eescdcopy.enrd@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $11.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–7277 Filed 3–26–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (BJA) Docket No. 1584]

Meeting of the Department of Justice Global Justice Information Sharing Initiative Federal Advisory Committee

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting of the Department of Justice (DOJ) Global Justice Information Sharing Initiative (Global) Federal Advisory Committee (GAC) to discuss the Global Initiative, as described at *www.it.ojp.gov/global.*

DATES: The meeting will take place on Wednesday, April 11, 2012, from 8:30 a.m. to 4 p.m. ET.

ADDRESSES: The meeting will take place at the Renaissance Washington, DC, Downtown hotel, 999 Ninth Street NW., Washington, DC 20001, Phone: (202) 898–9000.

FOR FURTHER INFORMATION CONTACT: J. Patrick McCreary, Global Designated Federal Employee (DFE), Bureau of

Justice Assistance, Office of Justice Programs, 810 Seventh Street, Washington, DC 20531; Phone: (202) 616–0532 [**Note:** this is not a toll-free number]; Email: *James.P.McCreary@usdoj.gov*.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Due to security measures, however, members of the public who wish to attend this meeting must register with Mr. J. Patrick McCreary at the above address at least (7) days in advance of the meeting. Registrations will be accepted on a space available basis. Access to the meeting will not be allowed without registration. All attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting.

Anyone requiring special accommodations should notify Mr. McCreary at least seven (7) days in advance of the meeting.

Purpose

The GAC will act as the focal point for justice information systems integration activities to help facilitate development and coordination of national policy, practices, and technical solutions in support of the Administration's justice priorities.

The GAC will guide and monitor the development of the Global information sharing concept. It will advise the Assistant Attorney General, OJP; the Attorney General; the President (through the Attorney General); and local, state, tribal, and federal policymakers. The GAC will also advocate for strategies for accomplishing a Global information sharing capability.

Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the DFE.

J. Patrick McCreary,

Global DFE, Bureau of Justice Assistance, Office of Justice Programs.

[FR Doc. 2012–7291 Filed 3–26–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Extension of Information Collection With Revisions: Foreign Labor Certification Quarterly Activity Report

AGENCY: Employment and Training Administration, Labor.

ACTION: 60-Day notice of information collection under review: ETA Form 9127, Foreign Labor Certification Quarterly Activity Report; OMB Control Number 1205–0457.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation to provide the 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 (PRA), 44 U.S.C. 3506(c)(2)(A). The Department undertakes this consultation 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. Through this notice, the Employment and Training Administration (ETA) is soliciting comments concerning the revision of the approved information collection, Office of Management and Budget (OMB) Control Number 1205–0457, containing ETA Form 9127—Foreign Labor Certification Quarterly Activity Report and instructions. The ETA Form 9127 solicits information from State Workforce Agencies (SWAs) who are recipients of foreign labor certification grants about program-related activities performed by SWA staff in accordance with the specific fiscal year annual plans. This information collection is set to expire on May 31, 2012.

DATES: Please submit written comments to the office listed in the addresses section below on or before May 29, 2012.

ADDRESSES: William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, U.S. Department of Labor, Room C–4312, 200 Constitution Ave. NW., Washington, DC 20210. Comments may also be submitted by fax at (202) 693–2768; or by email to *ETA.OFLC.Forms@dol.gov,* subject line: Revised ETA Form 9127.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above by phone at (202) 693–3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD) or by sending an email to *ETA.OFLC.Forms@dol.gov,* subject line: ETA Form 9127 ICR copy.

SUPPLEMENTARY INFORMATION:

I. Background

Under the foreign labor certification programs administered by ETA, SWAs are funded through annual reimbursable grants to conduct certain activities which support the processing of applications for temporary labor certification filed by United States (U.S.) employers seeking to hire foreign workers in the H–2B or H–2A visa categories to perform agricultural or nonagricultural services or labor. These activities include reviewing and transmitting through the intrastate and interstate job clearance systems job orders submitted by employers to recruit U.S. workers, conducting H–2A prevailing wage and prevailing practice surveys, and performing H–2A related housing inspections of facilities offered to agricultural workers.

The information pertaining to the performance of these functions by the SWAs is currently collected on the OMB approved ETA Form 9127 and is used by Department staff to monitor foreign labor certification activities performed by SWAs. The Department is seeking to revise the current information collection related to the ETA Form 9127 to cover information collected by SWAs to determine prevailing, normal, accepted or common employment practices for a specific occupational classification by either formally surveying employers' prevailing practices or by conducting ''ad hoc'' surveys. 20 CFR part 655, Subpart B. The SWA survey information is used by the Department to ensure that an H–2A employer's job qualifications and requirements are consistent with the normal and accepted job qualifications required by employers who do not use H–2A workers in same or comparable occupations and crops, and that the H–2A employer's employment practices reflect the prevailing employment practices in the area of intended employment.

This extension of the ETA Form 9127 also includes revisions to SWA reporting requirements which correspond to recent changes in the distribution of foreign labor certification activities between ETA and SWAs.

Upon the approval of the extension and revisions of this currently approved information collection, the Department will continue to use the data collected to: (1) Monitor the number of job orders processed; and (2) Track the number of agricultural prevailing wage and practice surveys conducted and housing inspections made. This information is used for formulating budget estimates for both State and Federal workloads, and for monitoring a State's

performance against the grants and State annual plans.

II. Review Process

The Department 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;
- 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 submissions of responses.

III. Current Actions

Type of Review: Revision of a Currently Approved Information Collection.

Title: Foreign Labor Certification Quarterly Activity Report.

OMB Number: 1205–0457.

Affected Public: State, local or tribal governments and private sector—business or other for-profits.

Form(s): ETA Form 9127; Employment Practice Surveys.

Total Annual Respondents: 11,054.

Annual Frequency: Quarterly (ETA Form 9127); Annual and Ad Hoc (Employment Practice Surveys).

Total Annual Responses: 11,216.

Average Time per Response: 2 hours (ETA Form 9127); 30 minutes (Employment Practice Surveys).

Estimated Total Annual Burden Hours: 432 hours (ETA Form 9127); 5,738 hours (Employment Practice Surveys).

Total Annual Burden Cost for Respondents: $12,960 (ETA Form 9127); $172,125 (Employment Practice Surveys).

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Signed in Washington, DC, this 21st day of March 2012.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2012–7288 Filed 3–26–12; 8:45 am]

BILLING CODE 4510–FP–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit modification issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Officer, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On March 12, 2012, notice was published in the **Federal Register** of a request for modification to permit 2010 WM–04 (RPSC) for waste management activities at all U.S. Antarctic Program facilities in Antarctica. The requested modification transfers responsibility for waste management activities from the incumbent support contractor, Raytheon Polar Services Company, to Lockheed Martin Corporation. The transfer modified the permit to change the permit holder from Raytheon Polar Services Company to Lockheed Martin Corporation, who is the sole holder of the permit. All special conditions of the original permit remain the same except for the change in name of the permit holder. All references to Raytheon Polar Services Company now apply to Lockheed Martine Corporation.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2012–7293 Filed 3–26–12; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Engineering Education and Centers; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review Panel for Engineering Education and Centers (#173).

Date and Time: March 27, 2012 7 p.m.–10 p.m. March 28, 2012 8 a.m.–5 p.m. March 29, 2012 8 a.m.–5 p.m. March 30, 2012 8 a.m.–4:30 p.m.

Place: University of California—Berkeley, Berkeley, CA 94720.

To view the open session, attendees will need to go to the UC Berkeley campus, Stanley Hall, Room 106, 8–9 a.m. Pacific. Please contact Kevin Costa for the Close Circuit TV broadcast at *kcosta@berkeley.edu* or (510) 486–7568.

Type of Meeting: Part-Open.

Contact: Theresa Good, Program Director, National Science Foundation, Stafford I Room 585 Arlington, Virginia 22230 (703) 292–8380.

Purpose of Meeting: NSF site visit to conduct a renewal review during year 6 of the award period as stipulated in the cooperative agreement.

Agenda

Tuesday, March 27, 2012

7 p.m.–10 p.m. Closed—Executive Session—Site Visit Team Meeting

Wednesday, March 28, 2012

8 a.m.–9 a.m. Open via Close Circuit TV—(POC for broadcast is: Kevin Costa *kcosta@berkeley.edu*) Welcome, introductions and Overview of Center

9 a.m.–3:30 p.m. Closed—ERC Research Program

3:30 p.m.—7:30 p.m. Closed—ERC Education Program

Thursday, March 29, 2012

8 a.m.–9 a.m. Closed—Executive Session on Infrastructure

9 a.m.–3:30 p.m. Closed—ERC Testbeds

3:30 a.m.–4 p.m. Closed—ERC Infrastructure

4 p.m.–5:30 p.m. Closed—ERC Industry

Friday, March 30, 2012

8 a.m.–9 a.m. Closed—Executive Session, Review

9 a.m.–4:30 p.m. Closed—Executive Session, review and drafting site visit report

Reason for Late Notice: The meeting had been announced earlier on NSF's Web site. The Agency has since determined that a portion of this meeting should be open.

Reason for Closing: Topics to be discussed and evaluation during the site review will include information of a proprietary of confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government Sunshine Act.

Dated: March 21, 2012.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 2012–7259 Filed 3–26–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Proposed Information Collection Activity: Submission for OMB Review; Comment Request

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Notice.

SUMMARY: The NTSB is announcing its plan to submit a collection of information to the Office of Management and Budget (OMB) for approval, in accordance with the Paperwork Reduction Act. This information collection is necessary to obtain the contact information of family members and friends of those persons who have been involved in transportation accidents, as well as the survivors of those accidents, who seek to receive periodic updates from the NTSB's Office of Transportation Disaster Assistance. This Notice informs the public that it may submit comments concerning the proposed use of this form to the NTSB.

DATES: Submit written comments regarding this proposed collection of information by May 29, 2012.

ADDRESSES: Respondents may submit written comments on the collection of information to the National Transportation Safety Board, Office of Communications, Transportation Disaster Assistance Division, 490 East L'Enfant Plaza SW., Washington, DC 20594.

FOR FURTHER INFORMATION CONTACT: Paul Sledzik, NTSB Office of Communications, Transportation Disaster Assistance Division, at (202) 314–6185.

SUPPLEMENTARY INFORMATION: In accordance with OMB regulations that require this Notice for proposed Information Collection Requests, the NTSB herein notifies the public that it may submit comments on this proposed information collection. 5 CFR 1320.8(d)(1). Section 1320.8(d)(1) requires an agency, prior to submitting a collection of information to OMB for approval, to ''provide 60-day notice in the **Federal Register**, and otherwise consult with members of the public and affected agencies concerning * * * [the] proposed collection of information.'' Section 1320.8(d)(1) also requires the NTSB to solicit comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the NTSB to perform its mission; (2) the accuracy of the estimated burden; (3) ways for the NTSB 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 NTSB will summarize and/or include your comments in its subsequent request for OMB's clearance of this information collection pursuant to section 1320.10(a) of title 5, Code of Federal Regulations.

The NTSB will use the form to collect email and mailing addresses, as well as telephone contact information in order to provide information to survivors of transportation accidents, family members of fatally injured, and friends. The NTSB will collect this information via a paper copy of the form mailed or handed to individuals, or via a PDF form transmitted over email. The NTSB's purpose in proposing to use the form is to ensure that the NTSB has correct contact information for survivors, family members of fatally injured, and friends to whom the Transportation Disaster Assistance Division will provide information. The form will solicit the following information: (1) First and last name of family member, friend, or survivor who seeks to receive updates; (2) home, cellular, and/or other telephone number; (3) email address; (4) mailing address; (5) victim's name and description of requestor's relationship to victim; and (6) other comments or instructions, if desired.

The NTSB notes that completion of the form is voluntary. In addition, the NTSB will accept forms that are only partially completed; for example, some individuals may not wish to include their telephone numbers, but will include their email addresses. The NTSB accepts all forms that contain any type of contact information, as the NTSB is committed to providing information to and coordinating services for family members, friends, and survivors of transportation accidents. Once a person completes the form, the NTSB will add his or her name to a list of individuals whom the NTSB will contact to provide information and coordinate services.

The NTSB has carefully reviewed the form to ensure that it has used plain, coherent, and unambiguous terminology in its request for information. The form is not duplicative of other agencies' collections of information. The NTSB believes this proposed form, given its brevity, will impose a minimal burden on respondents: the NTSB estimates that respondents will spend, at most, 10 minutes in completing the form. The NTSB estimates that approximately 50 respondents per year will complete the form, but notes that this number may vary, given the unpredictable nature of the frequency of transportation accidents.

Dated: March 20, 2012.

Deborah A.P. Hersman,

Chairman.

[FR Doc. 2012–7241 Filed 3–26–12; 8:45 am]

BILLING CODE 7533–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Notice of Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, April 10, 2012.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The ONE item is open to the public.

Matter To Be Considered

8349A Safety Recommendations to the National Air Racing Group (NAG) Unlimited Division and Reno Air Racing Association (RARA) concerning the September 16, 2011, accident at the Reno National Championship Air Races (NCAR) in Reno, Nevada.

NEWS MEDIA CONTACT: *Telephone:* (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, April 6, 2012.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *www.ntsb.gov.*

Schedule updates including weather-related cancellations are also available at *www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: Candi Bing, (202) 314–6403 or by email at *bingc@ntsb.gov.*

Dated: April 23, 2012.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2012–7462 Filed 3–23–12; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–06264 (Terminated); NRC–2012–0077]

Acceptance Decision for the Unrestricted Use of the Former Michigan Chemical Company—Breckenridge Disposal Site

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of acceptability.

FOR FURTHER INFORMATION CONTACT: Eugenio (Gene) A. Bonano, Project Manager, MCID Branch, Division of Nuclear Materials Safety, Region III, U.S. Nuclear Regulatory Commission, Lisle, Illinois 60532–4352; telephone: 1–(630) 829–9826; fax number: 1–(630) 515–1259; email: *eugenio.bonano@nrc.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) is noticing the acceptability for unrestricted use of the Former Michigan Chemical Company (MCC), Breckenridge Disposal Site (BDS) (also known as NWI Breckenridge) near Breckenridge, Michigan. This site operated under the authority of U.S. Atomic Energy Commission (AEC) license number SMB–00833, which was terminated in 1971.

I. Introduction

The MCC, a subsidiary of Velsicol Corporation, operated a rare-earth metals processing plant from 1967 through 1970 in St. Louis, Michigan. The plant manufactured an array of chemical products; the products manufactured were fire retardant materials, insecticides, animal food supplements, and rare earth oxides.

The manufacture of rare-earth oxides at the St. Louis plant generated a dense, clay-like waste known as ''filter cake,'' which contained elevated levels of uranium and thorium, two naturally-occurring radioactive materials. The radioactive filter cake was buried at the BDS.

Burial of the filter cake at the BDS was permitted under AEC license number SMB–00833 and regulations in effect at the time. After the filter cake was buried, the AEC terminated the license in 1971, concluding that the BDS was suitable for unrestricted use.

Several years after the license was terminated, residual radioactive contamination above NRC limits was found at the BDS. The NRC contacted the site owner to determine how it planned to remediate the problem.

On April 14, 1999, the NRC issued a letter to NWI Land Management (NWI), then-owner of the BDS, directing NWI to clean up the site under the regulatory framework of Title 10 of the Code of Federal Regulations (10 CFR) part 20, Subpart E, ''Radiological Criteria for License Termination.'' Action on the NRC's request was delayed when NWI and its parent company, Fruit of the Loom, declared bankruptcy in 1999; a bankruptcy settlement was reached between the United States government and Fruit of the Loom in 2002.

As part of the bankruptcy settlement, Fruit of the Loom and NWI gave title to the BDS to a Custodial Trust, which was established to remediate the BDS using the framework set forth in 10 CFR part 20, Subpart E. Under the terms of the settlement, the Custodial Trust was not subject to NRC licensing or enforcement authority, but would consult with NRC in its development and application of a remediation plan for the BDS. The NRC's role in the remediation has been to provide technical assistance to the Custodial Trust and independent verification of site remediation.

II. Summary

The Custodial Trust hired a contractor to complete remediation of the BDS. Through its contractor, the Custodial Trust completed remediation and final status surveys (FSS) of the BDS in September 2011, and in October 2011, submitted a final status survey report (FSSR) to the NRC for its review and approval.

Prior to receiving the FSSR, the NRC had conducted 25 inspections of the contractor's decommissioning activities between May 2010 and September 2011. Specifically, the NRC inspections were performed to ensure compliance with the contractor's NRC-approved remedial work plans (RWP) and NRC safety regulations. The inspectors also performed independent confirmatory radiological surveys of site survey units as defined in the contractor's RWP (ML110590136) and FSS plans (ML11279A019).

On January 3, 2012, the NRC completed its review of the contractor's final status survey report (FSSR) for the BDS, which is available for public review in the NRC's Agencywide Documents Access and Management System (ADAMS) using the Accession Number ML12004A051. The NRC staff's review confirmed that the FSSR was adequate to demonstrate compliance with the radiological criteria for unrestricted use per 10 CFR part 20 Appendix E for the BDS. The FSS results demonstrated that each survey unit met the radiological criteria for unrestricted use. Radiological surveys and soil sampling data were consistent with the data quality objectives as described in the FSSR, work plans, and the NRC's NUREG–1757, ''Consolidated Decommissioning Guidance—Characterization, Survey, and Determination of Radiological Criteria,'' and NUREG–1575, ''Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM).''

Residual radioactivity at the BDS is below the regulatory dose limit to an average member of a critical group and does not exceed 25 mrem per year as specified in 10 CFR 20.1402, ''Radiological Criteria for Unrestricted Use;'' there is reasonable assurance that the health and safety of the public will not be endangered by the unrestricted use of the BDS.

III. Conclusion

Based on the NRC's 25 onsite inspections, the NRC's independent and confirmatory surveys, and the NRC staff's review of the FSSR for the BDS, the NRC concluded that the BDS radiological status was consistent with the provisions of 10 CFR part 20, ''Standards for Protection against Radiation,'' 10 CFR 20.1402, ''Radiological Criteria for Unrestricted Use;'' therefore, the site can be released for unrestricted use. The NRC involvement with this site is now considered ended, and no further actions regarding this project are planned unless new information is identified that would alter the NRC's conclusion. The NRC staff documented its review of the remediation activities, FSSs, and the FSSR in a Safety Evaluation Report (SER) (ML12052A066).

IV. Further Information

Documents related to this action, including the FSSR, NRC Inspection Reports, SER and supporting documentation, are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access ADAMS, which provides text and image files of the NRC's public documents. The ADAMS accession numbers for the documents related to this notice are listed as an attachment at the end of the SER (ML12052A066). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, 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*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland

20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Lisle, Illinois this 20th day of March, 2012.

For the Nuclear Regulatory Commission.

Aaron T. McCraw,

Acting Chief, Materials Control, ISFSI, and Decommissioning Branch, Division of Nuclear Materials Safety, Region III.

[FR Doc. 2012–7314 Filed 3–26–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Notice of Sunshine Act Meeting

DATE: Weeks of March 26, April 2, 9, 16, 23, 30, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of March 26, 2012

Tuesday, March 27, 2012

8:55 a.m. Affirmation Session (Public Meeting) (Tentative)

a. *FirstEnergy Nuclear Operating Co.* (Davis-Besse Nuclear Power Station, Unit 1), Appeal of LBP–11–13 (Apr. 26, 2011), Docket No. 50–346–LR (Tentative).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

9 a.m. Briefing on License Renewal for Research and Test Reactors, (Public Meeting), (Contact: Jessie Quichocho, 301–415–0209).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of April 2, 2012—Tentative

Tuesday April 3, 2012

9:30 a.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD), (Public Meeting), (Contact: Cindy Flannery, 301–415–0223).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of April 9, 2012—Tentative

Tuesday, April 10, 2012

9 a.m. Briefing on the Final Report of the Blue Ribbon Commission on America's Nuclear Future (Public Meeting), (Contact: Alicia Mullins, 301–492–3351).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of April 16, 2012—Tentative

There are no meetings scheduled for the week of April 16, 2012.

Week of April 23, 2012—Tentative

Tuesday, April 24, 2012

9 a.m. Briefing on Part 35 Medical Events Definitions—Permanent Implant Brachytherapy (Public Meeting), (Contact: Michael Fuller, 301–415–0520).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of April 30, 2012—Tentative

Monday, April 30, 2012

9:30 a.m. Briefing on Human Capital and Equal Employment Opportunity, (EEO) (Public Meeting) (Contact: Kristin Davis, 301–492–2208).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov*.

Dated: March 22, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–7435 Filed 3–23–12; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0182]

Terrestrial Environmental Studies for Nuclear Power Stations

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to Regulatory Guide (RG) 4.11, ''Terrestrial Environmental Studies for Nuclear Power Stations.'' This guide provides technical guidance that the NRC staff considers acceptable for terrestrial environmental studies and analyses supporting licensing decisions for nuclear power reactors.

ADDRESSES: Please refer to Docket ID NRC–2011–0182 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0182. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select *''ADAMS Public Documents''* and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. Revision 2 of Regulatory Guide 4.11 is available in ADAMS under Accession No. ML113350385. The regulatory analysis may be found in ADAMS under Accession No. ML113350388.
- *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.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Mekonen Bayssie, Regulatory Guide

Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–251–7489; email: *Mekonen.Bayssie@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 2 of RG 4.11 was issued with a temporary identification as Draft Regulatory Guide, DG–4016. This guide focuses on terrestrial analyses for licensing new nuclear power stations under Title 10 of the Code of Federal Regulations (10 CFR) part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants'' and power reactors under 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities'' and this guide is also useful in identifying the more limited studies and analyses needed for nuclear reactor operating license renewal under 10 CFR part 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants,'' and portions may also be relevant to nuclear reactor decommissioning.

II. Further Information

DG–4016, was published in the **Federal Register** on August 12, 2011 (76 FR 50274) for a 60-day public comment period. The public comment period closed on October 14, 2011. No public comments were received.

Dated at Rockville, Maryland, this 16th day of March, 2012.

For the Nuclear Regulatory Commission.

Richard A. Jervey,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2012–7313 Filed 3–26–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–3103; NRC–2010–0264]

Uranium Enrichment Fuel Cycle Facility Inspection Reports Regarding Louisiana Energy Services LLC, National Enrichment Facility, Eunice, NM, Prior to the Commencement of Operations

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff has conducted inspections of the Louisiana Energy Services (LES), LLC, National enrichment Facility in Eunice, New Mexico, and has verified that cascades number 1.5, 1.6, 1.7, 1.8, 2.1, and 2.4 as well as autoclave one of the facility have been constructed in accordance with the requirements of the approved license. The NRC staff has prepared inspection reports documenting its findings in accordance with the requirements of the NRC Inspection Manual.

ADDRESSES: Please refer to Docket ID NRC–2010–0264 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly-available, using the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2010–0264. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library 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.* In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the section of this notice entitled, *Availability of Inspection Reports.*
- *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: Michael Raddatz, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 492–3108; email: *Michael.Raddatz@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC staff has conducted inspections of the Louisiana Energy Services (LES), LLC, National enrichment Facility in Eunice, New Mexico, and has verified that cascades number 1.5, 1.6, 1.7, 1.8, 2.1, and 2.4 as well as autoclave one of the facility have been constructed in accordance with the requirements of the approved license. The NRC staff has prepared inspection reports documenting its findings in accordance with the requirements of the NRC Inspection Manual. As a result of these inspections, on November 15, 2011, the Commission authorized the licensee to start operation of cascade number 1.5. On December 2, 2011, the Commission authorized the licensee to start operation of Autoclave one. On December 21, 2011, the Commission authorized the licensee to start operation of cascade number 1.6. On January 23, 2012, the Commission authorized the licensee to start operation of cascade number 1.7. Finally, on March 1, 2012, the Commission authorized the licensee to start operations of cascades numbered 1.8, 2.1, and 2.4.

The publication of this Notice satisfies the requirements of Title 10 of the Code of Federal Regulations (10 CFR) 70.32 (k) and Section 193(c) of the Atomic Energy Act of 1954, as amended.

The introduction of uranium hexafluoride into any module of the National Enrichment Facility is not permitted until the Commission completes an operational readiness and management measures verification review to verify that management measures that ensure compliance with the performance requirements of 10 CFR 70.61 have been implemented and confirms that the facility has been constructed in accordance with the license and will be operated safely. Subsequent operational readiness and management measures verification reviews will continue throughout the various phases of plant construction and, upon completion of these subsequent phases, additional notices will be posted to verify that the phase in question has been constructed in accordance with the license and to acknowledge licensee readiness for operations.

II. Availability of Inspection Reports

The following table provides the ADAMS accession numbers for the inspection reports prepared by the NRC staff. For information on how to access ADAMS, see the **ADDRESSES** section of this document.

Inspection Report Nos.	Date	ADAMS Accession No.
70–3103/2012–002		Pending
70–3103/2011–013	January 25, 2012	ML12025A286
70–3103/2011–009	December 8, 2011	ML11342A131
70–3103/2011–007	December 16, 2011	ML11353A102
70–3103/2011–004	October 28, 2011	ML11301A218
70–3103/2011–008	June 15, 2011	ML111660886
70–3103/2011–002	April 29, 2011	ML111190268
70–3103/2010–012	July 21, 2010	ML102020385
70–3103/2010–007	March 31, 2010	ML100900329
70–3103/2010–005	March 26, 2010	ML100850424
70–3103/2009–004	December 17, 2009	ML093511013
70–3103/2009–006	October 8, 2009	ML092820188
70–3103/2009–003	September 30, 2009	ML092730612
70–3103/2009–002	June 26, 2009	ML091770643
70–3103/2009–001	March 26, 2009	ML090850669
70–3103/2008–006	March 20, 2009	ML090790642
70–3103/2008–004	December 19, 2008	ML083540709
70–3103/2008–003	October 30, 2008	ML083040618
70–3103/2008–002	July 10, 2008	ML081930118
70–3103/2008–001	April 24, 2008	ML081160345
70–3103/2007–004	March 7, 2008	ML080670475
70–3103/2007–003	November 2, 2007	ML073060571
70–3103/2007–002	August 16, 2007	ML072280647
70–3103/2007–001	May 24, 2007	ML071440430
70–3103/2006–001	January 19, 2007	ML070190661

Dated at Rockville, Maryland, this 9th day of March 2012.

For the U.S. Nuclear Regulatory Commission.

Brian W. Smith,

Chief, Uranium Enrichment Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2012–7310 Filed 3–26–12; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Submission for OMB Review; Request for Comments

ACTION: 30-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. The purpose of this notice is to allow 30 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

DATES: Comments must be submitted on or before April 26, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB approval number and should be sent via email to: *oira_submission@omb.eop.gov* or fax to: 202–395–3086. Attention: Desk Officer for Peace Corps.

FOR FURTHER INFORMATION CONTACT: Denora Miller, FOIA Officer, Peace Corps, 1111 20th Street NW., Washington, DC 20526, (202) 692–1236, or email at *pcfr@peacecorps.gov*. Copies of available documents submitted to OMB may be obtained from Denora Miller at address listed above.

SUPPLEMENTARY INFORMATION: The Peace Corps Act states that ''[t]he President may enroll in the Peace Corps for service abroad qualified citizens and nationals of the United States (referred to in this Act as ''volunteers''). The terms and conditions of the enrollment * * * of volunteers shall be exclusively those set forth in this Act and those consistent therewith which the President may prescribe * * *'' 22 U.S.C. 2504(a). Eligibility requirements for the Peace Corps have been prescribed in 22 CFR part 305. Among those eligibility requirements is one relating to medical status. An Applicant ''must, with reasonable accommodation, have the physical and mental capacity required of a Volunteer to perform the essential functions of the Peace Corps Volunteer assignment for which he or she is otherwise eligible and be able to complete an agreed upon tour of service, ordinarily two years, without undue disruption due to health problems.'' 22 CFR 305.2(c). All applicants for service must undergo a physical examination and a dental evaluation prior to Volunteer service to determine if they meet this medical status eligibility requirement. In addition, under 22 U.S.C. 2504(e), the Peace Corps provides medical care to Volunteers during their service and the information collected will also be used in connection with medical care and treatment during Peace Corps service for applicants who become Volunteers. Finally, the information collected may serve as a point of reference for any potential future Volunteer worker's compensation claims.

Volunteers serve in 67 developing countries where western-style healthcare is often not available. Volunteers are placed in remote locations where they may suffer hardship because they have no access to running water and/or electricity. They also may be placed in locations with extreme environmental conditions related to cold, heat or high altitude and they may be exposed to diseases not generally found in the U.S. Volunteers may be placed many hours from the Peace Corps medical office and not have easy access to any health care provider. Therefore, a thorough review of an Applicant's past medical history is an

essential first step to determine their suitability for service in Peace Corps.

The current process requires almost all Applicants to undergo a costly and time consuming full medical evaluation. Under the current process, it sometimes happens that after an Applicant has spent large amounts of time and money, the Peace Corps finds that the Applicant is not medically qualified to serve. In 2012, the Peace Corps will change the current process in order to reduce the time and expense of Applicants and to ensure that only those who accept an invitation to serve undergo a complete medical evaluation. However, Applicants who have certain particularly difficult to accommodate conditions will be evaluated early in the process. This will reduce the time and expense for those Applicants who would, even with reasonable accommodation, not be likely to be able to perform the essential functions of a Peace Corps Volunteer and complete a tour of service without undue disruption due to health problems.

Under the new system, the Applicant will begin the medical part of the application process by completing a comprehensive health history form called the ''Health History Form''. After completion of the Health History Form and after passing preliminary non-health-related assessments, the Applicant will be ''nominated'' to a program. This nomination does not guarantee an invitation to serve, but it does hold a place so the Applicant may proceed with the process. After a review by the Peace Corps pre-service medical staff of the Health History Form and any supplemental forms that the Applicant is required to submit following nomination, the Applicant may be medically pre-cleared. An Applicant who is medically pre-cleared and who accepts an invitation to serve as a Peace Corps Volunteer undergoes a final medical clearance. Final medical clearance is on the basis of a complete physical examination, as documented in a Report of Physical Examination.

The forms listed below may be sent to an individual Applicant at one of the following times in the medical review process: (1) After the Applicant completes the Health History Form and receives a nomination; (2) after a Peace Corps nurse reviews the Applicant's Health History Form and any completed forms previously requested; or (3) at the time of the Applicant's physical examination. The results of the physical examination and the information contained in the specific evaluation forms covered by this Supporting Statement will be used to make an individualized determination as to whether an Applicant for Volunteer service will, with reasonable accommodation, be able to perform the essential functions of a Peace Corps Volunteer and complete a tour of service without undue disruption due to health problems.

If, based on the Applicant's responses on the Health History Form, additional information is required in order to make an individualized determination as to whether the Applicant will, with reasonable accommodation, be able to perform the essential functions of a Peace Corps Volunteer and complete a tour of service without undue disruption due to health problems, then one or more of the forms listed below may be sent to the Applicant.

Method: The Peace Corps will introduce these forms electronically as part of a larger business process improvement project. Applicants will gain access to the forms via a secure online portal. As described below, in most instances, Applicants will have to download the forms for their health care providers to complete. Completed forms can be scanned and uploaded back into the Applicant's secure Peace Corps online portal or they can be faxed or mailed to the Peace Corps Office of Medical Services. The Peace Corps anticipates that most Applicants will submit the forms electronically and that only those with no electronic access will submit a paper version.

Title: Individual Specific Medical Evaluation Forms (16).

OMB Control Number: 0420-pending.

Type of Review: New.

Respondents: Individuals/Physicians.

Respondents' obligation to reply: Required for Volunteer service.

Burden to the public:

- Allergy Treatment Form

(a) Estimated number of Applicants/physicians: 100/100.

(b) Frequency of response: One time.

(c) Estimated average burden per response: 20 minutes/10 minutes.

(d) Estimated total reporting burden: 33.3 hours/16.7 hours.

(e) Estimated annual cost to respondents: Indeterminate.

General description of collection: When an Applicant reports that he or she is currently receiving allergy shot treatments, Peace Corps provides the Applicant with an Allergy Treatment Form for his or her treating physician to complete. The Peace Corps is not able to arrange for Volunteers to receive allergy shots during their Peace Corps service. Peace Corps Volunteers generally serve in areas that are isolated and have limited access to Western-trained providers and health care systems. The Applicant completes the form after discussing with his or her physician whether the Applicant will be able to live overseas for 27 months of Peace Corps service without receiving allergy shots. The Applicant is required to certify that the Applicant has discussed stopping allergy shots with his or her physician and that the physician agrees that the allergy shots can be stopped without unreasonable risk of substantial harm to the Applicant's health.

- Asthma Evaluation Form

(a) Estimated number of Applicants/physicians: 500/500.

(b) Frequency of response: One time.

(c) Estimated average burden per response: 75 minutes/30 minutes.

(d) Estimated total reporting burden: 625 hours/250 hours.

(e) Estimated annual cost to respondents: Indeterminate.

General description of collection: When an Applicant reports on the Health History Form symptoms of moderate persistent or severe persistent asthma in the past two years, he or she will be provided an Asthma Evaluation Form for the treating physician to complete. The determination of whether the reported symptoms indicate moderate persistent or severe persistent asthma is based on recognized classifications of asthma severity. The Asthma Evaluation Form asks for the physician to document the Applicant's condition of asthma, including any asthma symptoms, triggers, treatments, or limitations or restrictions due to the condition, as well as to certify that the Applicant can safely serve 27 months overseas. This form will be used as the basis for an individualized determination as to whether the Applicant will, with reasonable accommodation, be able to perform the essential functions of a Peace Corps Volunteer and complete a tour of service without undue disruption due to health problems. This form will also be used to determine the type of accommodation that may be needed, such as placement of the Applicant within reasonable proximity to a hospital in case treatment is needed for a severe asthma attack.

- Diabetes Diagnosis Form

(a) Estimated number of Applicants/physicians: 36/36.

(b) Frequency of response: One time.

(c) Estimated average burden per response: 75 minutes/30 minutes.

(d) Estimated total reporting burden: 45 hours/18 hours.

(e) Estimated annual cost to respondents: Indeterminate.

General description of collection: When an Applicant reports the condition of diabetes Type 1 on the Health History Form, the Applicant will be provided a Diabetes Diagnosis Form for the treating physician to complete. In certain cases, the Applicant may also be asked to have the treating physician complete a Diabetes Diagnosis Form if the Applicant reports the condition of diabetes Type 2 on the Health History Form. The Diabetes Diagnosis Form asks the physician to document the diabetes diagnosis, etiology, possible complications, and treatment, as well as to certify that the Applicant can safely serve 27 months overseas. This form will be used as the basis for an individualized determination as to whether the Applicant will, with reasonable accommodation, be able to perform the essential functions of a Peace Corps Volunteer and complete a tour of service without undue disruption due to health problems. This form will also be used to determine the the type of accommodation that may be needed, such as placement of an Applicant who requires the use of insulin in order to ensure that adequate insulin storage facilities are available at the Applicant's site.

• Disease Diagnosis Form

(a) Estimated number of Applicants/physicians: 400/400.
(b) Frequency of response: One time.
(c) Estimated average burden per response: 75 minutes/30 minutes.
(d) Estimated total reporting burden: 500 hours/200 hours.
(e) Estimated annual cost to respondents: Indeterminate.

General description of collection: When an Applicant reports on the Health History Form a medical condition of significant severity (other than one covered by another form), he or she may be provided a Disease Diagnosis Form for the treating physician to complete. The Disease Diagnosis Form may also be provided to an Applicant whose responses on the Health History Form indicate that the Applicant may have an unstable medical condition that requires ongoing treatment. The Disease Diagnosis Form asks the physician to document the diagnosis, etiology, possible complications and treatment, as well as to certify that the Applicant can safely serve 27 months overseas. This form will be used as the basis for an individualized determination as to whether the Applicant will, with reasonable accommodation, be able to perform the essential functions of a Peace Corps Volunteer and complete a tour of service without undue disruption due to health problems. This form will also be used to determine the type of accommodation that may be needed, such as placement of an Applicant to take account of the Applicant's medical condition (e.g., avoidance of high altitudes or proximity to a hospital).

• Low Body Mass Index Evaluation Form

(a) Estimated number of Applicants/physicians: 50/50.
(b) Frequency of response: One time.
(c) Estimated average burden per response: 105 minutes/60 minutes.
(d) Estimated total reporting burden: 87.5 hours/50 hours.
(e) Estimated annual cost to respondents: Indeterminate.

General description of collection: When an Applicant reports a height and weight on the Health History Form consistent with a body mass index (BMI) that is below 17 for women and 18 for men, the Applicant will be provided a Low Body Mass Index Evaluation Form for a physician to complete. The Low Body Mass Index Evaluation Form asks the physician to indicate whether the Applicant's low BMI is indicative of any condition which could be exacerbated during Peace Corps service. This form will be used as the basis for an individualized determination as to whether the Applicant will, with reasonable accommodation, be able to perform the essential functions of a Peace Corps Volunteer and complete a tour of service without undue disruption due to health problems. Based on the information on the completed form, the Peace Corps may determine that further medical assessments are required.

• Mental Health Treatment Summary Form

(a) Estimated number of Applicants/physicians: 150/150.
(b) Frequency of response: One time.
(c) Estimated average burden per response: 105 minutes/60 minutes.
(d) Estimated total reporting burden: 262.5 hours/150 hours.
(e) Estimated annual cost to respondents: Indeterminate.

General description of collection: The Mental Health Treatment Form will be used when an Applicant reports on the Health History Form a history of certain serious mental health conditions, such as bipolar disorder, schizophrenia, mental health hospitalization, attempted suicide or cutting, or treatments or medications related to these conditions. In these cases, an Applicant will be provided a Mental Health Treatment Summary Form for a licensed mental health counselor, psychiatrist or psychologist to complete. The Mental Health Treatment Summary Form asks the counselor, psychiatrist or psychologist to document the dates and frequency of therapy sessions, clinical diagnoses, symptoms, course of treatment, psychotropic medications, mental health history, level of functioning, prognosis, risk of exacerbation or recurrence while overseas, recommendations for follow up and any concerns that would prevent the Applicant from completing 27 months of service without undue disruption. This form will be used as the basis for an individualized determination as to whether the Applicant will, with reasonable accommodation, be able to perform the essential functions of a Peace Corps Volunteer and complete a tour of service without undue disruption due to health problems. This form will also be used to determine the type of accommodation that may be needed, such as placement of the Applicant in a country with appropriate mental health support.

• Eating Disorder Treatment Summary Form

(a) Estimated number of Applicants/physicians: 232/232.
(b) Frequency of response: One time.
(c) Estimated average burden per response: 105 minutes/60 minutes.
(d) Estimated total reporting burden: 406 hours/232 hours.
(e) Estimated annual cost to respondents: Indeterminate.

General description of collection: The Eating Disorder Treatment Summary Form will be used when an Applicant reports a past or current eating disorder diagnosis in the Health History Form. In these cases the Applicant is provided an Eating Disorder Treatment Summary Form for a mental health specialist, preferably with eating disorder training, to complete. The Eating Disorder Treatment Summary Form asks the mental health specialist to document the dates and frequency of therapy sessions, clinical diagnoses, presenting problems and precipitating factors, symptoms, Applicant's weight over the past three years, relevant family history, course of treatment, psychotropic medications, mental health history inclusive of eating disorder behaviors, level of functioning, prognosis, risk of recurrence in a stressful overseas environment, recommendations for follow up, and any concerns that would prevent the Applicant from completing 27 months of service without undue disruption due to the diagnosis. This form will be used as the basis for an individualized determination as to

whether the Applicant will, with reasonable accommodation, be able to perform the essential functions of a Peace Corps Volunteer and complete a tour of service without undue disruption due to health problems. This form will also be used to determine the type of accommodation that may be needed, such as placement of the Applicant in a country with appropriate mental health support.

• Mental Health Current Evaluation Form

(a) Estimated number of Applicants/professional: 439/439.

(b) Frequency of response: One time.

(c) Estimated average burden per response: 265 minutes/180 minutes.

(d) Estimated total reporting burden: 1,939 hours/1,317 hours.

(e) Estimated annual cost to respondents: Indeterminate.

General description of collection: The Mental Health Current Evaluation Form is used when an Applicant reports a mental health condition in the Health History Form and it is determined that a current mental health evaluation is needed. A current mental health evaluation might be needed if information on the condition is out-dated or previous reports on the condition do not provide enough information to adequately assess the current status of the condition. In these cases, the Applicant will be provided a Mental Health Current Evaluation Form for a licensed mental health counselor, psychiatrist or psychologist to complete over one to three evaluation sessions. The Mental Health Current Evaluation Form asks the mental health professional to document the clinical diagnoses, presenting symptoms, risk of recurrence in a stressful overseas environment, coping strategies, evaluation of overall functioning, psychotropic medications, current psychological tests administered, recommendations for follow up, and any concerns that would prevent the Applicant from completing 27 months of service without undue disruption due to the diagnosis. This form will be used as the basis for an individualized determination as to whether the Applicant will, with reasonable accommodation, be able to perform the essential functions of a Peace Corps Volunteer and complete a tour of service without undue disruption due to health problems. This form will also be used to determine the type of accommodation that may be needed, such as placement of the Applicant in a country with appropriate mental health support.

• Alcohol/Substance Abuse Evaluation Form

(a) Estimated number of Applicants/specialist: 100/100.

(b) Frequency of response: One time.

(c) Estimated average burden per response: 165 minutes/60 minutes.

(d) Estimated total reporting burden: 275 hours/100 hours.

(e) Estimated annual cost to respondents: Indeterminate.

General description of collection: The Alcohol/Substance Abuse Current Evaluation Form is used when an Applicant reports in the Health History Form a history of substance abuse (i.e., alcohol or drug related problems such as blackouts, daily or heavy drinking patterns or the misuse of illegal or prescription drugs) and that this substance abuse affects the Applicant's daily living or that the Applicant has ongoing symptoms of substance abuse. In these cases, the Applicant is provided an Alcohol/Substance Abuse Current Evaluation Form for a substance abuse specialist to complete. The Alcohol/Substance Abuse Current Evaluation Form asks the substance abuse specialist to document the history of alcohol/substance abuse, dates and frequency of any therapy sessions, which alcohol/substance abuse assessment tools were administered, mental health diagnoses, psychotropic medications, self harm behavior, current clinical assessment of alcohol/substance use, clinical observations, risk of recurrence in a stressful overseas environment, recommendations for follow up, and any concerns that would prevent the Applicant from completing 27 months of service without undue disruption due to the diagnosis. This form will be used as the basis for an individualized determination as to whether the Applicant will, with reasonable accommodation, be able to perform the essential functions of a Peace Corps Volunteer and complete a tour of service without undue disruption due to health problems. This form will also be used to determine the type of accommodation that may be needed, such as placement of the Applicant in a country with appropriate sobriety support or counseling support.

• Mammogram Form

(a) Estimated number of Applicants: 224.

(b) Frequency of response: One time.

(c) Estimated average burden per response: 105 minutes.

(d) Estimated total reporting burden: 392 hours.

(e) Estimated annual cost to respondents: Indeterminate.

General description of collection: The Mammogram Form is used with all female Applicants who will be 50 years of age or older, who have received invitations to serve as Volunteers. The purpose of the form is to provide the Peace Corps with results of the Applicant's latest mammogram and to record the wishes of the Applicant regarding routine mammogram screening during service. The Peace Corps uses the information in the Mammogram Form to determine if the Applicant currently has breast cancer and to ascertain whether the Applicant wishes to receive routine mammogram screening while in service. A female Applicant who wishes to receive routine mammogram screening during service will be limited to being placed in a country with mammogram screening capabilities. If the Applicant waives routine mammogram screening during service, the Applicant's physician also completes this form in order to confirm that the physician has reviewed the Applicant's risk factor assessment and discussed the results with the Applicant and concurs that foregoing screening mammography represents an acceptable risk.

• Pap Screening Form

(a) Estimated number of Applicants/physicians: 2,695/2,695.

(b) Frequency of response: One time.

(c) Estimated average burden per response: 25 minutes/15 minutes.

(d) Estimated total reporting burden: 1,123 hours/674 hours.

(e) Estimated annual cost to respondents: Indeterminate.

General description of collection: The *Pap Screening Form* is used with all female Applicants who have received invitations to serve as Volunteers. They are required to obtain a Pap examination within four months prior to their departure. This form assists the Peace Corps in determining whether a female Applicant with mildly abnormal Pap results will need to be placed in a country with appropriate Pap follow-up capabilities.

• Colon Cancer Screening Form

(a) Estimated number of Applicants: 354.

(b) Frequency of response: One time.

(c) Estimated average burden per response: 60 minutes—165 minutes.

(d) Estimated total reporting burden: 354 hours–973.5 hours.

(e) Estimated annual cost to respondents: Indeterminate.

General description of collection: The *Colon Cancer Screening Form* is used with all Applicants who are 50 years of age or older who have received

invitations to serve as Volunteers. The purpose of the form is to provide the Peace Corps with the results of the Applicant's latest colon cancer screening. Any testing deemed appropriate by the American Cancer Society is accepted. The Peace Corps uses the information in the Colon Cancer Screening Form to determine if the Applicant currently has colon cancer. Additional instructions are included pertaining to abnormal test results.

• ECG Form

(a) Estimated number of Applicants/physicians: 354/354.
(b) Frequency of response: One time.
(c) Estimated average burden per response: 25 minutes/15 minutes.
(d) Estimated total reporting burden: 147.5 hours/88.5 hours.
(e) Estimated annual cost to respondents: Indeterminate.

General description of collection: The ECG Form is used with all Applicants who are 50 years of age or older, who have received invitations to serve as Volunteers. The purpose of the form is to provide the Peace Corps with the results of an electrocardiogram. The Peace Corps uses the information in the electrocardiogram to assess whether the Applicant has any cardiac abnormalities that might affect the Applicant's service. Additional instructions are included pertaining to abnormal test results. The electrocardiogram is performed as part of the Applicant's physical examination.

• Reactive Tuberculin Test Evaluation Form

(a) Estimated number of Applicants/physicians: 352/352.
(b) Frequency of response: One time.
(c) Estimated average burden per response: 75–105 minutes/30 minutes.
(d) Estimated total reporting burden: 440–616 hours/176 hours.
(e) Estimated annual cost to respondents: Indeterminate.

General description of collection: The *Reactive Tuberculin Test Evaluation Form* is used when an Applicant, who has received an invitation to serve as Volunteer, reports a history of reactivity to tuberculosis skin testing or a history of BCG vaccination in the Health History Form or if a reactivity is discovered as part of the Applicant's physical examination. In these cases, the Applicant is provided a Reactive Tuberculin Test Evaluation Form for the treating physician to complete. The treating physician is asked to document the type and date of a current TB test, TB test history, diagnostic tests if indicated, treatment history, risk assessment for developing active TB, current TB symptoms, and recommendations for further evaluation and treatment. In the case of a positive result on the TB test, a chest x-ray is also required, along with treatment for latent TB.

• Insulin Dependent Supplemental Documentation Form

(a) Estimated number of Applicants/physicians: 8/8.
(b) Frequency of response: One time.
(c) Estimated average burden per response: 70 minutes/60 minutes.
(d) Estimated total reporting burden: 9.3 hours/8 hours.
(e) Estimated annual cost to respondents: Indeterminate.

General description of collection: The Insulin Dependent Supplemental Documentation Form is used with Applicants, who have received invitations to serve as Volunteers, and who have reported on the Health History Form that they have insulin dependent diabetes. In these cases, the Applicant is provided an Insulin Dependent Supplemental Documentation Form for the treating physician to complete. The Insulin Dependent Supplemental Documentation Form asks the treating physician to document that he or she has discussed with the Applicant medication (insulin) management, including whether an insulin pump is required, as well as the care and maintenance of all required diabetes related monitors and equipment. This form assists the Peace Corps in determining whether the Applicant will be in need of insulin storage while in service and, if so, will assist the Peace Corps in determining an appropriate placement for the Applicant.

• Prescription for Eyeglasses Form

(a) Estimated number of Applicants/physicians: 2,432/2,432.
(b) Frequency of response: One time.
(c) Estimated average burden per response: 105 minutes/15 minutes.
(d) Estimated total reporting burden: 4,256 hours/608 hours.
(e) Estimated annual cost to respondents: Indeterminate.

General description of collection: The *Prescription for Eyeglasses Form* is used with Applicants, who have received invitations to serve as Volunteers, and who have reported on the Health History Form that they use corrective lenses or otherwise have uncorrected vision that is worse than 20/40. In these cases, Applicants are provided a Prescription for Eyeglasses Form for their prescriber to indicate eyeglasses frame measurements, lens instructions, type of lens, gross vision and any special instructions. This form is used in order to enable the Peace Corps to obtain replacement eyeglasses for a Volunteer during service.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Dated: This notice is issued in Washington, DC on March 22, 2012.

Garry W. Stanberry,

Acting Associate Director, Management.

[FR Doc. 2012–7339 Filed 3–26–12; 8:45 am]

BILLING CODE 6051–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29984; 812–13971]

Domini Social Investment Trust and Domini Social Investments LLC; Notice of Application

March 21, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

APPLICANTS: Domini Social Investment Trust (the ''Trust'') and Domini Social Investments LLC (the ''Adviser'') (collectively, ''Applicants'').

DATES: *Filing Dates:* The application was filed October 26, 2011, and amended on March 15, 2012.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the

Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 16, 2012, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Megan L. Dunphy, Domini Social Investments LLC, 532 Broadway, 9th Floor, New York, NY 10012–3939.

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel, at (202) 551–6990, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

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 an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company and currently offers three series of shares (each a ''Series''), each with its own distinct investment objectives, policies and restrictions.[1] The Adviser is, and any future Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Adviser serves as the investment adviser to each Series pursuant to an investment advisory agreement with the Trust (each an ''Investment Advisory Agreement'' and collectively, the ''Investment Advisory Agreements'').[2] Each Investment Advisory Agreement was approved or will be approved by the board of trustees of the Trust (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Trust, the Subadvised Fund, or the Adviser (''Independent Trustees'') and by the shareholders of the relevant Subadvised Fund in the manner required by sections 15(a) and 15(c) of the Act and rule 18f–2 under the Act.[3]

2. Under the terms of each Investment Advisory Agreement, the Adviser, subject to the oversight of the Board, furnishes a continuous investment program for each Subadvised Fund. The Adviser periodically reviews investment policies and strategies of each Subadvised Fund and based on the need of a particular Subadvised Fund may recommend changes to the investment policies and strategies of the Subadvised Fund for consideration by its Board. For its services to each Subadvised Fund, the Adviser receives an investment advisory fee from that Subadvised Fund as specified in the applicable Investment Advisory Agreement based on that Subadvised Fund's average daily net assets. The terms of the Investment Advisory Agreements also permit the Adviser, subject to the approval of the relevant Board, including a majority of the Independent Trustees, and the shareholders of the applicable Subadvised Funds (if required by applicable law), to delegate portfolio management responsibilities of all or a portion of the assets of the Subadvised Fund to one or more subadvisers (''Subadvisers''). The Adviser has entered into subadvisory agreements (''Subadvisory Agreements'') with two Subadvisers to serve as Subadvisers to the Series.[4] Each Subadviser is, and any future Subadviser will be, an investment adviser as defined in section 2(a)(20) of the Act as well as registered with the Commission as an ''investment adviser'' under the Advisers Act. The Adviser evaluates, allocates assets to and oversees the Subadvisers, and makes recommendations about their hiring, termination and replacement to the Board, at all times subject to the authority of the Board. The Adviser currently compensates each Subadviser out of the advisory fees paid to the Adviser under the relevant Investment Advisory Agreement; in the future, Subadvised Funds may directly pay advisory fees to the Subadvisers.

3. Applicants request an order to permit the Adviser, subject to Board approval, to select certain Subadvisers to manage all or a portion of the assets of a Subadvised Fund pursuant to a Sub-Advisory Agreement and materially amend Sub-Advisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or a Subadvised Fund or the Adviser, other than by reason of serving as a Subadviser to Subadvised Funds (''Affiliated Subadviser'').

4. Applicants also request an order exempting the Subadvised Funds from certain disclosure provisions described below that may require the Applicants to disclose fees paid to each Subadviser by the Adviser or a Subadvised Fund. Applicants seek an order to permit each Subadvised Fund to disclose (as a dollar amount and a percentage of each Subadvised Fund's net assets) only: (a) the aggregate fees paid to the Adviser and any Affiliated Subadvisers; and (b) the aggregate fees paid to Subadvisers other than Affiliated Subadvisers (collectively, the ''Aggregate Fee Disclosure''). A Subadvised Fund that employs an Affiliated Subadviser will provide separate disclosure of any fees paid to the Affiliated Subadviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series

[1] Applicants also request relief with respect to any future series of the Trust and to any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser or its successors (included in the term ''Adviser''); (b) uses the manager of managers structure described in the application (''Manager of Managers Structure''); and (c) complies with the terms and conditions of this application (together with the current Series, each a ''Subadvised Fund'' and collectively, the ''Subadvised Funds''). The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an Applicant. Each Series that is or currently intends to be a Subadvised Fund, and each Subadviser (as defined below) that currently intends to rely on the requested order, is identified in this application. For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. If the name of any Subadvised Fund contains the name of a Subadviser, the name of the Adviser that serves as the primary adviser to the Subadvised Fund will precede the name of the Subadviser.

[2] Each future investment advisory agreement between an Adviser and a Subadvised Fund is also included in the term ''Investment Advisory Agreement''.

[3] The term ''Board'' also includes the board of trustees or directors of a future Subadvised Fund.

[4] The Adviser has entered into Subadvisory Agreements with (i) Wellington Management Company LLP as a subadviser to manage the Domini Social Equity Fund and Domini International Social Equity Fund; and (ii) Seix Investment Advisors LLC as a subadviser to manage the Domini Social Bond Fund. Neither of the existing subadvisers is affiliated with the Adviser.

investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (''Exchange Act''). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b) and (c) of Regulation S–X require a registered investment company to include in its financial statement information about the investment advisory fees.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, 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. Applicants state that the requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Adviser, subject to the review and approval of the Board, to select the Subadvisers who are best suited to achieve the Subadvised Fund's investment objective. Applicants assert that, from the perspective of the shareholder, the role of the Subadviser is substantially equivalent to the role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose unnecessary delays and expenses on the Subadvised Funds and may preclude the Subadvised Funds from acting promptly when the Adviser and Board consider it appropriate to hire Subadvisers or amend Subadvisory Agreements. Applicants note that the Investment Advisory Agreements and any Subadvisory Agreement with an Affiliated Subadviser (if any) will continue to be subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f–2 under the Act.

7. If new Subadvisers are hired, the Subadvised Funds will inform shareholders of the hiring of a new Subadviser pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days after a new Subadviser is hired for any Subadvised Fund, that Subadvised Fund will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement; [5] and (b) the Subadvised Fund will make the Multi-manager Information Statement available on the Web site identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days. In the circumstances described in this Application, a proxy solicitation to approve the appointment of new Subadvisers provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Moreover, as indicated above, the applicable Board would comply with the requirements of Sections 15(a) and 15(c) of the 1940 Act before entering into or amending Sub-Advisory Agreements.

8. Applicants assert that the requested disclosure relief would benefit shareholders of the Subadvised Funds because it would improve the Adviser's ability to negotiate the fees paid to Subadvisers. Applicants state that the Adviser may be able to negotiate rates that are below a Subadviser's ''posted'' amounts if the Adviser is not required to disclose the Subadvisers' fees to the public. Applicants submit that the requested relief will also encourage Subadvisers to negotiate lower subadvisory fees with the Adviser if the lower fees are not required to be made public.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Subadvised Fund may rely on the order requested herein, the operation of the Subadvised Fund in the manner described in the Application will be approved by a majority of the Subadvised Fund's outstanding voting securities as defined in the Act or, in the case of a Subadvised Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder before such Subadvised Fund's shares are offered to the public.

2. The prospectus for each Subadvised Fund will disclose the existence, substance, and effect of any order granted pursuant to the Application. In addition, each Subadvised Fund will hold itself out to the public as employing the Manager of Managers Structure. The prospectus will prominently disclose that the Adviser has the ultimate responsibility, subject to oversight by the Board, to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Subadvised Funds will inform shareholders of the hiring of a new Subadviser within 90 days after the hiring of the new Subadviser pursuant to the Modified Notice and Access Procedures.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Subadvised Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the

[5] A ''Multi-manager Notice'' will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Exchange Act, and specifically will, among other things: (a) Summarize the relevant information regarding the new Subadviser; (b) inform shareholders that the Multi-manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Subadvised Funds.

A ''Multi-manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement, except as modified by the requested order to permit Aggregate Fee Disclosure. Multi-manager Information Statements will be filed electronically with the Commission via the EDGAR system.

discretion of the then-existing Independent Trustees.

7. Whenever a Subadviser change is proposed for a Subadvised Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Subadvised Fund and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

8. Whenever a Subadviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

9. Each Adviser will provide the Board, no less frequently than quarterly, with information about the profitability of the Adviser on a per Subadvised Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Subadviser during the applicable quarter.

10. The Adviser will provide general management services to each Subadvised Fund, including overall supervisory responsibility for the general management and investment of the Subadvised Fund's assets and, subject to review and approval of the Board, will: (i) Set the Subadvised Fund's overall investment strategies; (ii) evaluate, select, and recommend Subadvisers to manage all or a portion of the Subadvised Fund's assets; (iii) allocate and, when appropriate, reallocate the Subadvised Fund's assets among Subadvisers; (iv) monitor and evaluate the Subadvisers' performance; and (v) implement procedures reasonably designed to ensure that Subadvisers comply with the Subadvised Fund's investment objective, policies and restrictions.

11. No Trustee or officer of the Trust or of a Subadvised Fund or director or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadviser except for (i) ownership of interests in the Adviser or any entity that controls, is controlled by or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Subadviser or an entity that controls, is controlled by or is under common control with a Subadviser.

12. Each Subadvised Fund will disclose in its registration statement the Aggregate Fee Disclosure.

13. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the Application, the requested order will expire on the effective date of that rule.

14. For Subadvised Funds that pay fees to a Subadviser directly from fund assets, any changes to a Subadvisory Agreement that would result in an increase in the total management and advisory fees payable by a Subadvised Fund will be required to be approved by the shareholders of the Subadvised Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–7282 Filed 3–26–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

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, March 29, 2012 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Gallagher, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, March 29, 2012 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

An adjudicatory matter; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: March 22, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–7385 Filed 3–23–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66636; File No. SR–NASDAQ–2012–035]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Assess a Fee for the QView Service

March 21, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on March 15, 2012, The NASDAQ Stock Market LLC (the ''Exchange'' or ''NASDAQ'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to assess a fee for the QView service, which provides a subscribing member firm with increased transparency over its trading activity on the Exchange by allowing the member to track its Exchange order flow. The Exchange will implement the proposed fee effective March 15, 2012.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

7058. QView

QView is a web-based tool designed to give a subscribing member the ability to track its order flow on Nasdaq, and create both real-time and historical reports of such order flow. Members may subscribe to QView *for a fee of $600 per month, per member firm* [at no cost].

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to assess a fee of $600 per month, per member firm for subscription to QView effective March 15, 2012. The Exchange initially adopted QView on December 1, 2011 at no cost to subscribers.[3] QView is a Web-based, front-end application, which provides a subscribing member firm with increased transparency over its trading activity on the Exchange by allowing the member firm to track its Exchange order flow.[4] In particular, a QView subscriber is able to track all of its trading activity on the Exchange through detailed order and execution summaries. QView provides a subscribing member with statistics concerning the total number of executions, total volume, dollar value of executions, executions by symbol, add versus remove, buy versus sell, display versus non-display, number of open orders, use of routing strategies and liquidity code designation. QView also provides information concerning how the subscribing member firm ranks in NASDAQ market activity as compared to other NASDAQ participants. The data provided by QView is available to the subscribing member both in real-time and historically. Subscribing member firms are also able to export such data from QView to other systems.

A member firm must subscribe to NASDAQ TradeInfo[5] to subscribe to QView. QView was developed to work in conjunction with TradeInfo, so that a subscriber to QView is able to seamlessly filter down to the specific order or execution information of the orders and executions provided in the QView dashboard interface. The dashboard also allows a QView subscriber to track its executions and open orders in real-time, as well as view its executions and open orders as an overall summary, with all totals displayed by quantity, share volume, or dollar value. As such, QView provides both an overall summary of a subscribing member firm's activity, as well as detailed order and execution information, thus providing the subscriber a comprehensive tool to track its trading activity.[6]

A member firm that is a subscriber to QView as of March 14, 2012 may cancel its subscription to QView at any time prior to close of business March 30, 2012 and not pay the proposed subscription fee.[7]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[8] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange believes that the proposed fee is equitable and not unfairly discriminatory because member firms that voluntarily elect to subscribe to this service will be charged the same fee. QView provides subscribing member firms with a top down view of their trading activity on the Exchange and the proposed fee is assessed on a per member firm basis. The value of QView to a subscribing member firm is the convenience of aggregating and displaying the firm's data in a single interface regardless of the amount of data (executions, open orders, etc.) or the number of MPIDs that the firm has. In this regard, the Exchange notes that the number of MPIDs that a subscribing member firm possesses is not indicative of quantity and value of the data provided by QView. In many cases, a firm with a single MPID may in fact have more data than a firm with multiple MPIDs. As such, the Exchange believes that it is equitable to assess the fee on a per firm basis, as opposed to a per MPID basis. The Exchange also believes that the proposed fee does not unfairly discriminate because it is available to all member firms on equal terms and there is no differentiation among member firms in regard to the fee assessed to subscribers. In addition, the Exchange believes that it is not unfair discrimination to limit the service to broker-dealers that are members of the Exchange because it provides information solely concerning a subscribing member firm's trading activity on the Exchange.

The Exchange determined that the proposed fee is reasonable based on member firm interest in QView, costs associated with developing and supporting QView, and the value that QView provides to subscribing member firms. The information provided by QView relates to the subscribing member firm's activity on the Exchange and the member firm may access and aggregate this information by other means, including its own internal systems. As such, the Exchange believes that if a member firm determines that the fee is not cost-efficient for its needs, it may decline to subscribe to QView and access such information from other sources. Finally, the maximum fee for a member that elects to subscribe to this service, regardless of the number of MPIDs held by the firm, is $600 per month. Subscription to QView is per member firm, therefore a firm must subscribe only once to QView to receive the service for as many of its MPIDs as it wishes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, the proposed rule change is pro-competitive in that it will allow the Exchange to disseminate a new service on a voluntary basis. QView

[3] Securities Exchange Act Release No. 65851 (November 30, 2011), 76 FR 75924 (December 5, 2011) (SR–NASDAQ–2011–157).

[4] A subscribing member possessing multiple MPIDs must designate the MPIDs for which it would like to receive QView information. A subscribing member, however, may elect to monitor only the activity occurring through certain ports associated with a subscribed MPID. A member firm seeking to subscribe to QView that accesses the Exchange through a sponsored arrangement with another Exchange member must provide the Exchange with an executed sponsored access data agreement prior to subscribing to QView. The sponsored access data agreement makes clear that the subscribing member firm is permitted to designate the sponsoring firm's MPID for subscription to QView. A copy of this form may be found here: *http://www.nasdaqtrader.com/content/productsservices/trading/QView/QView_SponsoredAccessAgreement.pdf.*

[5] TradeInfo is a web-based tool that, among other things, allows users access to all of the NASDAQ order and execution information for their entire firm for both equities and options through a single interface. TradeInfo is offered complimentary as part of the NASDAQ Workstation or separately for a fee of $95 per user per month. *See* Rule 7015(f) (Securities Exchange Act Release No. 55135 (January 19, 2007), 72 FR 3893 (January 26, 2007) (SR–NASDAQ–2006–062)).

[6] For example, QView will inform a subscribing member of its executions in a particular day and provide a link to the details of those executions, which is provided by TradeInfo.

[7] NASDAQ has provided notice to member firms of the March 30, 2012 cancelation date.

[8] 15 U.S.C. 78f(b)(4).

is voluntary on the part of the Exchange which is not required to offer such products and services, and voluntary on the part of prospective users that are not required to use it and may obtain the information from other sources.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–035 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–035. 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 a.m. and 3 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–NASDAQ–2012–035 and should be submitted on or before April 17, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–7246 Filed 3–26–12; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66637; File No. SR–CBOE–2012–028]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

March 21, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 2012, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently lists on its Fees Schedule the fingerprint processing fees that are collected and retained by the Financial Industry Regulatory Authority, Inc. (''FINRA'') via its Web CRD℠ registration system for the registration of associated persons of Exchange Trading Permit Holder (''TPH'') and TPH organizations that are not also FINRA members. The Exchange was recently notified by FINRA that, effective March 19, 2012, FINRA is decreasing the per card Initial Submission and Third Submission fees from $30.25 to $27.50. As such, the Exchange proposes to amend its Fees Schedule to reflect this change.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[3] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[4] which provides that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The proposed change is reasonable because the fees for fingerprint processing will now be lower than it previously was. The proposed change is equitable and not unfairly discriminatory because the new, lower fingerprint processing fees will apply to all eligible parties. Further, this fee is not being assessed or set by the Exchange, but by FINRA.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [5] of the Act and paragraph (f) of Rule 19b–4 [6] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–028 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–028. 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 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2012–028 and should be submitted on or before April 17, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–7278 Filed 3–26–12; 8:45 am]

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[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66635; File No. SR–NSCC–2012–04]

Self-Regulatory Organizations; The National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 53 of Its Rules and Procedures Relating to the Alternative Investment Product Services To Standardize and Automate the Method by Which Registered AIP Broker-Dealer Members Meet Their Good Control Location Obligations for Uncertificated Securities

March 21, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 7, 2012, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which Items have been prepared primarily by NSCC. NSCC filed the proposal pursuant to Section 19(b)(3)(A)(iii) [2] of the Act, and Rule 19b–4(f)(4)(i) [3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSCC proposes to amend Rule 53 of its Rules and Procedures with respect to its Alternative Investment Product Services (''AIP''). The proposed rule change is intended to standardize and automate the method by which registered AIP broker-dealer members meet their possession or control obligations for uncertificated securities under Commission Rule 15c3–3(b)(1) [4] when they designate another AIP Member as a ''good control location.''

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4)(i).

[4] 17 CFR 240.15c3–3(b)(1).

may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC proposes to amend Rule 53 of its Rules and Procedures. The purpose of the proposed rule change is to standardize and automate the method by which registered AIP broker-dealer members (collectively ''AIP Distributors'') meet their possession or control obligations for uncertificated securities under Rule 15c3–3(b)(1)[6] of the Act when they designate another AIP Member, which acts on behalf of or under authority of the sponsor, general partner, or any other party responsible for the creation or manufacturing of a participating AIP investment product (collectively ''AIP Manufacturers'') as a ''good control location,'' as more specifically provided below.

''Good Control Location'' Background

Commission registered broker-dealers that hold securities for the accounts of their customers are required to maintain physical possession or control of all customer fully-paid and excess margin securities under Rule 15c3–3(b)(1)[7] of the Act. The possession or control requirement means that registered broker-dealers must have securities in their physical possession or in their name for the benefit of their customers at one of the several ''control locations'' identified by Rule 15c3–3(c)[8] of the Act. Because uncertificated securities cannot be physically held in a broker-dealer's possession, the broker-dealer must establish that the uncertificated securities are lodged in what are generally referred to as ''good control locations.'' Under the Commission's rule, good control locations include registered securities clearing agencies,[9] U.S. banks,[10] certain designated foreign financial institutions,[11] and ''such other locations as the Commission shall upon application from a broker or dealer find and designate to be adequate for the protection of customer securities.''[12]

The Commission staff has issued letters that allowed broker-dealers to use certain entities, which were obligated to create and maintain the ownership records with respect to such uncertificated securities as good control locations for uncertificated securities subject to certain conditions.[13] The conditions outlined in these letters have generally included the broker-dealers' receipt of certain assurances and representations from the securities' record keeper, which assurances and representations have come to be known as the ''No Lien Assurances.''[14]

In a No-Action Letter dated February 3, 2012 (''2012 No-Action Letter''), the Commission's Division of Trading and Markets (''Division'') addressed the use of AIP as a means for establishing good control locations.[15] In it, the Division stated that it would not recommend enforcement action against Charles Schwab & Co., Inc. (''Schwab'') if Schwab used AIP to establish good control locations for uncertificated securities of alternative investment products participating in AIP.

AIP Background

NSCC's AIP Service is a communications and payments processing platform for eligible alternative investment products, including interests in commodity pools, REIT securities, managed futures and managed currency products, and securities issued by hedge funds, private equity funds and funds of funds (collectively ''Eligible AIP Products''). AIP provides for the processing of transactions in these products and for the settlement of related payments on a pre-funded basis without netting and without a guarantee of payment in the event of a contra-side default.[16] Transactions processed through AIP include subscriptions and redemptions, distributions, position reporting, and account maintenance.

Since its implementation, AIP has standardized the way the alternative investment industry communicates information between broker-dealers, fund managers, administrators, custodians, and issuers of alternative investment products. In the last several months, the alternative investment industry has asked NSCC to further standardize and automate communications among these parties by creating a uniform mechanism by which AIP Distributors may satisfy their Rule 15c3–3(c) possession or control obligations when using AIP Manufacturers as good control locations. NSCC believes it can offer a number of control improvements to the current manual, decentralized, and paper-based mechanisms that are used today for establishing good control locations for uncertificated securities of alternative investments.

AIP Membership Requirements

Under NSCC Rule 53, the following types of entities are eligible to become AIP users (''AIP Members''):

1. A broker-dealer registered under the Act or a non-U.S. broker-dealer subject to oversight and regulation by the appropriate financial services regulator in its home jurisdiction;[17]
2. A bank or trust company that is a member of the U.S. federal reserve system or that is supervised and examined by U.S. federal or state banking authorities or a non-U.S. bank subject to oversight and regulation by the appropriate financial services regulator in its home jurisdiction;
3. An investment company registered under the Investment Company Act of 1940 (''Advisers Act''), or an issuer (structured as a fund or other pooled investment vehicle) that is not required to register thereunder;
4. An investment adviser as defined in the Advisers Act regardless of whether it is registered under the Advisers Act or is exempt from registration;
5. A commodity pool operator or commodity trading advisor as defined in the Commodity Exchange Act (''CEA'') regardless of whether the commodity pool operator or commodity trading advisor is registered pursuant to the CEA or is exempt from registration thereunder;
6. An insurance company subject to supervision or regulation under U.S. state insurance law or a non-U.S. insurance company subject to oversight and regulation by the appropriate

[5] The Commission has modified the text of the summaries prepared by NSCC.

[6] 17 CFR 240.15c3–3(b)(1).

[7] 17 CFR 240.15c3–3(b)(1).

[8] 17 CFR 240.15c3–3(b)(1).

[9] 17 CFR 240.15c3–3(c)(1).

[10] 17 CFR 240.15c3–3(c)(5).

[11] 17 CFR 240.15c3–3(c)(4).

[12] 17 CFR 240.15c3–3(c)(7).

[13] *See, e.g.,* Wayne Hummer & Co., SEC No-Action Letter, 1986 WL 65387 (SEC) (publicly avail. Apr. 8, 1986); Letter from Marc J. Hertzberg, Division of Market Regulation, to Brandon Becker, Wilmer, Cutler & Pickering (July 30, 1997); Letter from Mark M. Attar, Division of Market Regulation, SEC, to Brandon Becker, Wilmer, Cutler & Pickering (Sept. 17, 1999); Letter from Bonnie L. Gauch, Division of Market Regulation, SEC, to Michael K. Rafter, Holland & Knight, LLP (Jan. 5, 2000); Letter from Joseph I. Levinson, Special Counsel, Division of Trading and Markets, SEC, to Mark D. Fitterman, Morgan, Lewis & Bockius LLP (June 9, 2009); FOLIO[fn] Investments, Inc., SEC No-Action Letter, 2009 WL 58414 (Jan 6, 2009).

[14] Broker-dealers generally receive the No Lien Assurances by obtaining a hard-copy letter from the issuer or its transfer agent or other record keeper of the securities.

[15] Letter from Michael A. Macchiaroli, Division of Trading and Markets, SEC, to Peter J. Morgan III, Charles Schwab & Co., Inc. (February 3, 2012).

[16] Securities Exchange Act Release No. 34–57813 (May12, 2008), 73 FR 28539 (May 16, 2008).

[17] *But see* fn. 14, *infra.*

insurance regulator in its home jurisdiction; and

7. An entity engaged under contract to provide administrative services to one or more alternative investment products that can be processed through AIP.

Before acceptance as an AIP Member, each applicant must submit an executed AIP Membership Agreement to NSCC, agreeing that, among other things, it will:

1. Only use the AIP Service; [18]

2. Abide by the rules of NSCC and be bound by all of the provisions thereof and that NSCC will have all of the rights and remedies contemplated by the rules of NSCC;

3. Be bound by the rules of NSCC as to all matters and transactions occurring while the applicant is an AIP Member, notwithstanding that the applicant may subsequently cease to be an AIP Member;

4. Not submit, clear, or settle through NSCC any contract or transaction unless the rules of NSCC are part of the terms and conditions of such contract or transaction;

5. Pay to NSCC such charges as shall be established by NSCC by rule;

6. Not submit or confirm any transaction, charge, request, instruction, or transmission through NSCC's services or otherwise utilize NSCC's services in contravention of any law, rule, regulation, or statute applicable to the AIP Member;

7. Not submit any request, instruction, transaction, or other transmission through NSCC's services for which it is not directly or indirectly and whether acting on its own behalf or on behalf of any other entity, duly authorized;

8. Pay such fines as may be imposed in accordance with NSCC's rules for the failure of the AIP Member while an AIP Member to comply therewith; and

9. Be bound by any amendment to the rules of NSCC with respect to any use of NSCC's services subsequent to the time such amendment takes effect, as fully as though such amendment were now a part of the rules of NSCC; provided, however, that no such amendment shall affect an AIP Member's right to cease to be an AIP Member of NSCC unless before such amendment becomes effective, the AIP Member has opportunity to give written notice to NSCC of the AIP Member's election to discontinue being an AIP Member.

The Proposed Rule Changes

Currently, AIP provides for two alternative customer account designations either ''broker-controlled'' or ''customer-controlled.'' The initial account designation for an AIP account is generally made by the AIP Distributor acting on behalf of its investor customer. However, the AIP Manufacturer may change the account designation at any time. For example, if an investor were to directly notify the AIP Manufacturer that its account should no longer be designated as broker-controlled, the AIP Manufacturer could change the indication on the AIP system. The proposed rule changes to NSCC Rule 53 will apply solely with respect to ''broker-controlled'' AIP account designations.

NSCC proposes to amend Rule 53 to specify that when an AIP Distributor submits an AIP order for its customer account and requests a broker-controlled designation as part of the order, the AIP Manufacturer accepting the order (and accordingly making and approving the broker-controlled designation as part of the order) [19] will be making continual and ongoing representations and assurances to the controlling AIP Distributor that:

1. The Eligible AIP Product securities held (or to be held) in the account are not subject to any right, charge, security interest, lien, or claim of any kind in favor of the AIP Manufacturer or any person claiming through such AIP Manufacturer;

2. To the knowledge of the AIP Manufacturer, there are no substantial problems of an operational nature which the AIP Manufacturer is experiencing or which may endanger the interest of investors in the Eligible AIP Product;

3. The Eligible AIP Product securities held (or to be held) in the account are registered with the Commission pursuant to the Securities Act of 1933, as amended, are exempt from such registration, or are not required to be so registered;

4. The Eligible AIP Product securities in the account (or to be held in the account) are registered on the books and records of the AIP Manufacturer or its designee in the name of the controlling AIP Distributor on behalf of its customer;

5. In the case of Eligible AIP Product securities issued outside of the United States, the AIP Manufacturer does not require the controlling AIP Distributor or any of its customers to pay any fees other than for safe custody or administration as a condition for the transfer of the securities; and

6. The AIP Manufacturer understands and acknowledges that the controlling AIP Distributor may be relying on the above representations in order to establish custody in accordance with Rule 15c3–3 of the Act and that failure to comply with the above representations may require that the controlling AIP Distributor remove the Eligible AIP Product securities from the applicable customer's brokerage account.

The AIP Manufacturer representations and assurances in 1–6 above are collectively referred to as the ''AIP Manufacturer Representations and Assurances.''

The AIP Manufacturer Representations and Assurances will be obtained from each relevant AIP Manufacturer through an ''accept'' or ''decline'' option within the record layouts that reside in AIP. The relevant AIP Distributors will be able to determine through AIP whether the AIP Manufacturer Representations and Assurances have been provided by reference to an indicator on a security profile that is included on a data file provided to the AIP Distributor. NSCC also proposes to amend the AIP Membership Agreement with regard to AIP Manufacturers to provide that each time the AIP Manufacturer accepts an AIP order and designates the securities with respect to that order as ''broker-controlled,'' such AIP Manufacturer will be making the AIP Manufacturers Representations and Assurances on a continual and ongoing basis to the applicable AIP Distributor, so long as the ''broker-controlled'' designation remains in place.

Additionally, Rule 53, as amended, will provide that each AIP Distributor that is a registered broker-dealer and that is relying on a specified AIP Manufacturer's Representations and Assurances with respect to a customer account shall for so long as the applicable ''broker-controlled'' designation remains in place be continually stating that such AIP Distributor:

1. Carries those Eligible AIP Product securities ''long'' in each respective customer account;

2. Reflects all share positions of the applicable Eligible AIP Product separately in its securities records or ledgers maintained pursuant to Rule 17a–3 of the Act;

3. Maintains in a separate file a current list of all AIP Manufacturers of which Eligible AIP Product securities

[18] An AIP Member may use another NSCC service but only if the AIP Member also executes a separate NSCC Membership Agreement.

[19] As set forth above, broker-dealers are eligible to be AIP Members. However, a broker-dealer's authority to serve as a good control location is derived from Rule 15c3–3(c)(2) of the Act and applicable Commission and SRO guidance. Nothing in this proposed rule change is intended to contradict existing regulations pertaining to control locations under Rule 15c3–3 of the Act.

are carried on that AIP Distributor's books and records, including the name, telephone number, and address of a contact person at each AIP Manufacturer; and

4. Is not aware of any substantial problems of an operational nature which AIP or the applicable AIP Manufacturer or issuer (if different) may be experiencing and which may endanger the interests of the customer.

The above AIP Distributor statements (collectively the ''AIP Distributor Statements'') would be recorded by way of an electronic indicator within AIP.

NSCC proposes to amend the AIP Membership Agreement with regard to AIP Distributors to set forth that each AIP Distributor who shall be relying on an AIP Manufacturer's Representations and Assurances understands that such AIP Distributor will continually and on an ongoing basis be making the AIP Distributor Statements so long as the applicable ''broker-controlled'' designation remains in place.

The above AIP Manufacturer Representations and Assurances and AIP Distributor Statements conform to the No-Action Letters developed by the Commission staff and described herein, including the 2012 No-Action Letter addressing the use AIP for establishing good control locations. As noted above, registered broker-dealers currently establish their Commission Rule 15c3–3(c)(7) obligations by way of manual processes. Automating this process through AIP will standardize and centralize the process will assist the parties in establishing compliance with legal requirements and will provide a better audit trail for AIP Members and their regulators to verify compliance after the fact.

Further, if an AIP Manufacturer or AIP Distributor at any time elects to change the customer account designation from ''broker-controlled'' to ''customer-controlled,'' the above AIP Manufacturer Representations and Assurances and AIP Distributor Statements from that point forward would no longer apply to the relevant AIP Members, and each relevant AIP Distributor and AIP Manufacturer, as the case may be, would be put on notice that the designation with regard to the customer account has changed. As a condition set forth in the 2012 No-Action Letter, each AIP Distributor relying on the AIP Manufacturer Representations and Assurances is required to monitor AIP on a regular basis for any changes to the ''broker-controlled'' account designations for which the AIP Distributor maintains custody.[20]

The proposed rule change is consistent with the requirements of the Act and the rules and regulations issued thereunder because it promotes the prompt and accurate clearance and settlement of transactions in securities by automating, standardizing, and centralizing the communication of information between persons engaged in the clearance and settlement of securities transactions. In addition, the proposed rule change fosters cooperation and coordination between broker-dealers and issuers of securities and removes impediments to the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) [21] of the Act and Rule 19b–4 (f)(4)(i) [22] thereunder because it effects a change in NSCC's existing AIP services that does not adversely affect the safeguarding of securities or funds in the custody or control of NSCC or for which it is responsible and does not significantly affect the respective rights or obligations of NSCC or the persons using the service. The proposed rule change affects a service of NSCC which is not guaranteed (*i.e.,* to which NSCC is not a central counter-party) and which does not provide for the movement of securities or for the application of credits or debits to cash balances of members. Accordingly, the proposed rule change does not adversely affect the safeguarding of securities or funds in the custody or control of NSCC or for which NSCC is responsible. Additionally, designation of an account as ''broker-controlled'' or ''customer-controlled'' within AIP is wholly voluntary meaning that an AIP Manufacturer may choose to decline an order request with a broker-controlled designation and therefore may not be required to make the above stated assurances and representations. This is effectively what happens in the market today outside of AIP when a registered broker-dealer attempts to designate an account as broker-controlled but the applicable alternative investment product record keeper refuses to provide the requisite representations and assurances. A registered broker-dealers' failure to obtain such assurances and representations would preclude the registered broker-dealer from continuing to identify the customer account in such alternative investment product as ''broker-controlled.'' Under the proposed rule change, the rights and obligations of the parties would not change, but each relevant party would know the status of the customer account designation in a far less time-consuming manner. Further, if a ''customer controlled'' designation is made with respect to an AIP order, the above rule changes would not apply to either the AIP Manufacturer making the designation or to the applicable AIP Distributor. 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–NSCC–2012–04 on the subject line.

[20] *See* the 2012 No-Action Letter, Condition #7. Where an AIP Distributor learns that the designation for an Eligible AIP Product has been changed from ''broker-controlled'' to ''customer-controlled,'' the AIP Distributor should contact the AIP Manufacturer to confirm whether the position was intended to be returned to the customer. If the Eligible AIP Product is not re-designated as ''broker-controlled,'' the AIP Distributor should remove the position from the customer's brokerage account.

[21] 15 U.S.C. 78s(b)(3)(A)(iii).

[22] 17 CFR 240.19b–4(f)(4)(i).

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSCC–2012–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. 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 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2012/nscc/2012–04.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2012–04 and should be submitted on or before April 17, 2012.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2012–7276 Filed 3–26–12; 8:45 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66639; File No. SR–C2–2012–009]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

March 21, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 19, 2012, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently lists on its Fees Schedule the fingerprint processing fees that are collected and retained by the Financial Industry Regulatory Authority, Inc. (''FINRA'') via its Web CRD℠ registration system for the registration of associated persons of Exchange Trading Permit Holder (''TPH'') and TPH organizations that are not also FINRA members. The Exchange was recently notified by FINRA that, effective March 19, 2012, FINRA is decreasing the per card Initial Submission and Third Submission fees from $30.25 to $27.50. As such, the Exchange proposes to amend its Fees Schedule to reflect this change.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[3] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[4] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The proposed change is reasonable because the fees for fingerprint processing will now be lower than it previously was. The proposed change is equitable and not unfairly discriminatory because the new, lower fingerprint processing fees will apply to all eligible parties. Further, this fee is not being assessed or set by the Exchange, but by FINRA.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [5] of the Act and paragraph (f) of Rule 19b–4 [6] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f).

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–C2–2012–009 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2012–009. 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 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–C2–2012–009 and should be submitted on or before April 17, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–7281 Filed 3–26–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66641; File No. SR–CME–2012–05]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend Its Rules Relating to Interest Rate Swaps Clearing

March 21, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 8, 2012, the Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I and II below, which items have been prepared primarily by CME. The Commission is publishing this Notice and Order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Change

CME proposes to amend rules related to its interest rate swaps and interest rate futures currency businesses by establishing a portfolio margining program for proprietary portfolios containing interest rate swaps and futures positions. The text of the proposed rule change is available at CME's Web site at *http://www.cmegroup.com/market-regulation/rule-filings.html.*

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. CME 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 Purpose of, and Statutory Basis for, the Proposed Rule Change

CME is registered as a derivatives clearing organization (''DCO'') with the Commodity Futures Trading Commission (''CFTC'') and currently operates a substantial business clearing both interest rate swaps (''IRS'') and interest rate futures contracts. The changes that are the subject of this filing are proposed rules that would establish a portfolio margining program for proprietary portfolios containing IRS and interest rate futures positions. More specifically, the proposed changes include: new rules regarding portfolio margining; amendments to existing CME rules relating to its IRS Guaranty Fund Allocation rules; IRS Guaranty Fund Application rule amendments; and amendments to rules dealing with outsourcing to third parties. CME will also make corresponding changes to its Manual of Operations for CME Cleared Interest Rate Swaps. The specific rule amendments are discussed in more detail below.

CME notes that it has also submitted the proposed changes that are the subject of this filing to its primary regulator, the CFTC. CME expects that the proposed changes will be effective with the CFTC as of March 14, 2012. As described more below, CME believes there is good cause for the Commission to grant approval for the proposed rule changes on an accelerated basis so that they become effective with the Commission as of March 30, 2012.

1. Portfolio Margining Among Eligible Futures Products and IRS; Comingling of Related Positions

The proposed CME rule amendments would establish a portfolio margining program (''Program'') for portfolios containing IRS and Interest Rate Futures positions in order for eligible clearing members to receive risk offsets across CME's listed interest rate futures and cleared interest rate swap product suite. These amendments will appear in CME Rule 8G831 and certain related changes to existing CME Rule 802.

To participate in the Program a Clearing Member must under the proposed rules be both an IRS Clearing Member and a CME Clearing Member. The listed interest rate products that will be eligible for this program will be those with price risks that are

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

significantly and reliably correlated and initially will be Eurodollar and Treasury futures. Additionally, under the proposed rules, the CME Clearing House has the right to ask a participant to move futures positions in eligible products back to the participant's futures account if it is not risk reducing.

The 99% 5-day Historical VaR margin model with EWMA weighting that is currently used for IRS products will be extended to include the same level of coverage for commingled portfolios, and the existing default management process for interest rate swaps will be extended to portfolios which have commingled positions. Any losses for commingled portfolios exceeding the margin on hand of a defaulted member will be backed by CME's financial safeguards package for Interest Rate Swaps.

2. CME Rule 8G07.1—Changes to IRS Guaranty Fund Allocation

CME is also proposing to implement certain amendments to CME Rule 8G07.1 that would include changes to the allocation of the IRS Guaranty Fund among IRS Clearing Members. Currently the IRS Guaranty Fund is calculated monthly and is proportionally allocated to each IRS Clearing Member on the basis of its 90-day trailing average of its potential residual loss and 90-day trailing average of its gross notional open interest outstanding at the Clearing House. CME Clearing is proposing to change the measurement period from 90 days to 30 days in order for the IRS Guaranty Fund to more quickly react to an IRS Clearing Member's current activity and to align the measurement period with the frequency of Guaranty Fund calculations.

Additionally, each IRS Clearing Member's contribution to the IRS Guaranty Fund is currently the greater of its proportional share of the IRS Guaranty Fund as described above or a $50 million minimum contribution. The minimum was established to ensure that each IRS Clearing Member has an appropriate stake in proper default management regardless of the firm's position and incentivize a better default auction process. The result of the minimum requirement is that the IRS Guaranty fund is over-collateralized above the conservative estimates of our IRS Guaranty Fund methodology. The proposed amendments would size the IRS Guaranty Fund to the shortfall brought by the two largest net debtors and adjust each firm's contribution on that basis.

3. Rule 8G802.B—Seniorization and Subordination of IRS Guaranty Fund

In order to provide appropriate incentive for IRS Clearing Members to submit aggressive bids during an auction for a defaulted IRS Clearing Member's portfolio, CME is proposing to make amendments to Rule 8G802.B to modify the application of the IRS Guaranty Fund on the basis of each IRS Clearing Member's bidding during the auction process. Where a defaulted IRS Clearing Member has a portfolio of IRS denominated in multiple currencies, CME will split such portfolio by currency and separately hedge and auction the resulting split portfolios. IRS Clearing Members with open interest in a currency being auctioned are required to provide a bid for the auctioned portfolio. Each bid will be assessed for quality within the respective auction and a portion (or all) of such IRS Clearing Member's deposit to the IRS Guaranty Fund will be subject to seniorization (if such IRS Clearing Member provides the winning bid) and subordination (if such IRS Clearing Member provided an off market price). The amount subject to such seniorization/subordination for an auction will be based on a percentage determined for such IRS Clearing Member at the time of the related auction in accordance with our IRS default management procedures. Any IRS Guaranty Fund deposits that are subordinated will be allocated pro rata to IRS Losses after the CME corporate contribution and prior to any non-subordinated/seniorized deposits. Any contributions that are not seniorized or subordinated in accordance with above formula will be allocated pro rata to IRS losses after all subordinated amounts and prior to any seniorized amounts.

4. New Rule 8G04.3—Outsourcing to Third Parties

In connection with the CFTC's final rules for Derivatives Clearing Organization General Provisions and Core Principles relating to Core Principle G (Default Rules and Procedures) the CFTC implemented CFTC Regulation 39.16 which includes a requirement that DCOs permit clearing members to outsource certain obligations to qualified third parties. To codify CME's practice of permitting eligible arrangements for IRS, CME is adopting new CME Rule 8G04.3.

CME believes the proposed rule change is consistent with the requirements of the Act and particularly with Section 17A of the Act because it involves clearing of swaps and futures contracts and thus relate solely to CME's swaps and futures clearing activities pursuant to its registration as a derivatives clearing organization under the Commodity Exchange Act (''CEA'') and does not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service. CME further notes that the policies of the CEA with respect to clearing are comparable to a number of the policies underlying the Exchange Act, such as promoting market transparency for over-the-counter derivatives and futures markets, promoting the prompt and accurate clearance of transactions, and protecting investors and the public interest. The proposed rule changes accomplish those objectives by facilitating portfolio margining of interest rate swaps and interest rate futures at CME.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited and does not intend to solicit comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. 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 may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or send an email to *rule-comments@sec.gov.* Please include File No. SR–CME–2012–05 on the subject line.
- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CME–2012–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/*

rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME and on CME's Web site at *http://www.cmegroup.com/market-regulation/rule-filings.html.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CME–2012–05 and should be submitted on or before April 17, 2012.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

Section 19(b) of the Act [3] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. The Commission finds that the proposed rule change is consistent with the requirements of the Act, in particular with the requirements of Section 17A of the Act,[4] and the rules and regulations thereunder applicable to CME. Specifically, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act which requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions because it should allow CME to enhance its services in clearing IRS and Interest Rate Futures products, thereby promoting the prompt and accurate clearance and settlement of derivative agreements, contracts, and transactions.[5]

In its filing, CME requested that the Commission approve this proposed rule change on an accelerated basis. CME has articulated three reasons for granting approval on an accelerated basis. One, the products covered by this filing and CME's operations as a derivatives clearing organization for such products, are regulated by the CFTC under the CEA. Two, the proposed rule change relates solely to IRS and Interest Rate Futures products and therefore relate solely to CME's swaps clearing activities and do not significantly relate to CME's functions as a clearing agency for security-based swaps. Three, not approving this request on an accelerated basis will have a significant impact on the swap clearing business of CME as a designated clearing organization.

The Commission finds good cause for granting approval of the proposed rule change before the thirtieth day after publication of the notice of its filing because: (i) The proposed rule change does not significantly affect any securities clearing operations of the clearing agency (whether in existence or contemplated by its rules) or any related rights or obligations of the clearing agency or persons using such service; (ii) the clearing agency has indicated that not providing accelerated approval would have a significant impact on its IRS clearing business as a designated clearing organization; and (iii) the activity relating to the non-security clearing operations of the clearing agency for which the clearing agency is seeking approval is subject to regulation by another federal regulator.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–CME–2012–05) is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–7279 Filed 3–26–12; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78s(b).

[4] 15 U.S.C. 78q–1. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2012–0018]

Reinstate Index to Chapter III in 20 CFR

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: At the request of the Office of the Federal Register, we are reinstating the finding aid ''Index to Chapter III'' in Title 20 of the Code of Federal Regulations (CFR). The finding aid contains a list of all Acquiescence Rulings published in the **Federal Register** from January 11, 1990 through April 1, 2012.

DATES: The notice is effective March 27, 2012. The Office of the Federal Register will include the Index in the April 2012 edition of Title 20, chapter III of the CFR.

FOR FURTHER INFORMATION CONTACT: Martin Sussman, Social Security Administration, Office of Regulations, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1767. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

We are reinstating the ''Index to Chapter III'' as a finding aid in our chapter of Title 20 of the CFR. The Index lists the Acquiescence Rulings we published in the **Federal Register** from January 11, 1990, through April 1, 2012. The Index last appeared as a finding aid in the April 1, 2008 edition of our chapter of the CFR.

You may also find a listing of Acquiescence Rulings on our Web site at *http://mwww.socialsecurity.gov/OP_Home/rulings/rulfind1.html*.

The Office of the Federal Register requested that we publish this notice, including the text of the Index, which follows. The Office of the Federal Register will include the Index in the April 2012 edition of Title 20, chapter III of the CFR.

Index to Chapter III

INDEX TO CHAPTER III—SOCIAL SECURITY ACQUIESCENCE RULINGS

EDITORIAL NOTE: This listing is provided for information purposes only. It is compiled and kept up-to-date by the Social Security Administration.

This listing contains all Acquiescence Rulings (ARs) published in the **Federal Register** under the requirements of 20 CFR 402.35(b)(2) during the period from January 11, 1990, through April 1, 2012. The listing includes the AR number, title, publication date and the **Federal Register** reference number. (The parenthetical number that follows each AR number refers to the United States judicial circuit involved.) This notice also lists ARs that were rescinded during this period. In addition, SSA has

included **Federal Register** references for three prior cumulative AR listing notices.

SSA believes this publication will assist individuals in finding ARs.

The CFR may not state the circuitwide standard in effect when SSA has determined that the holding in a decision of a United States Court of Appeals is at variance with SSA's national interpretation.

ACQUIESCENCE RULINGS

Published cumulative lists of ARs relating to claims under title II and title XVI of the Social Security Act and part B of the Black Lung Benefits Act were issued for ARs published prior to January 11, 1990.

1. The first notice announcing 14 ARs issued during the period from January 23, 1986, through April 30, 1986, was published in the **Federal Register** on June 4, 1986 (51 FR 20354).

2. A second notice announcing 12 additional ARs issued during the period from May 20, 1986, through March 31, 1987, was published in the **Federal Register** on August 7, 1987 (52 FR 29911).

3. A third notice announcing 11 more ARs, issued during the period from May 1, 1987, through November 14, 1988, the withdrawal of one AR that was issued earlier, and the withdrawal of one of the ARs issued during this period was published in the **Federal Register** on July 10, 1990 (55 FR 28302).

AR 86–2R(2) *Rosenberg v. Richardson,* 538 F.2d 487 (2d Cir. 1976); *Capitano v. Secretary of HHS,* 732 F.2d 1066 (2d Cir. 1984)—Entitlement of a Deemed Widow When a Legal Widow is Entitled on the Same Earnings Record—Title II of the Social Security Act.

Published: June 25, 1992, at 57 FR 28527.

NOTE: The original AR for the Second Circuit Court of Appeals' holding in *Rosenberg* and *Capitano* (AR 86–2(2)), issued January 23, 1986, was rescinded and replaced by this revised AR.

AR 86–19R(11) *Woodson v. Schweiker,* 656 F.2d 1169 (5th Cir. 1981)—Interpretation of the Deemed Marriage Provision—Title II of the Social Security Act.

Published: June 25, 1992, at 57 FR 28524.

NOTE: The original AR applicable in the Eleventh Circuit for the Fifth Circuit Court of Appeals' holding in *Woodson* (AR 86–19(11)), issued May 22, 1986, was rescinded and replaced by this revised AR.

AR 90–1(9) *Paxton v. Secretary of Health and Human Services,* 856 F.2d 1352 (9th Cir. 1988)—Treatment of Dependent's Portion of Augmented Veterans Benefit Paid Directly to Veteran—Title XVI of the Social Security Act.

Published: July 16, 1990, at 55 FR 28946. Rescinded—See section on Rescissions in this notice.

AR 90–2(2) *Ruppert v. Bowen,* 871 F.2d 1172 (2d Cir. 1989)—Evaluation of a Rental Subsidy as In-Kind Income for Supplemental Security Income (SSI) Benefit Calculation Purposes—Title XVI of the Social Security Act.

Published: July 16, 1990, at 55 FR 28947.

AR 90–3(4) *Smith v. Bowen,* 837 F.2d 635 (4th Cir. 1987)—Use of Vocational Expert or Other Vocational Specialist in Determining Whether a Claimant Can Perform Past Relevant Work—Titles II and XVI of the Social Security Act.

Published: July 16, 1990, at 55 FR 28949. Rescinded—See section on Rescissions in this notice.

AR 90–4(4) *Culbertson v. Secretary of Health and Human Services,* 859 F.2d 319 (4th Cir. 1988), *Young v. Bowen,* 858 F.2d 951 (4th Cir. 1988)—Waiver of Administrative Finality in Proceedings Involving Unrepresented Claimants Who Lack the Mental Competence to Request. Administrative Review—Titles II and XVI of the Social Security Act.

Published: July 16, 1990, at 55 FR 28943.

AR 90–5(2) *Kier v. Sullivan,* 888 F.2d 244 (2d Cir. 1989), *reh'g denied,* January 22, 1990—Assessment of Residual Functiona1 Capacity in Disabled Widows' Cases—Title II of the Social Security Act.

Published: September 18, 1990, at 55 FR 38400. Rescinded—See section on Rescissions in this notice.

AR 90–6(1) *Cassus v. Secretary of Health and Human Services,* 893 F.2d 454 (lst Cir. 1990), *reh'g denied,* April 9, 1990—Assessment of Residual Functional Capacity in Disabled Widows' Cases—Title II of the Social Security Act.

Published: September 18, 1990, at 55 FR 38398. Rescinded—See section on Rescissions in this notice.

AR 90–7(9) *Ruff v. Sullivan,* 907 F.2d 915 (9th Cir. 1990)—Assessment of Residual Functional Capacity in Disabled Widows' Cases—Title II of the Social Security Act.

Published: September 18, 1990, at 55 FR 38402. Rescinded—See section on Rescissions in this notice.

AR 91–1(5) *Lidy v. Sullivan,* 911 F.2d 1075 (5th Cir. 1990)—Right to Subpoena an examining Physician for Cross-examination Purposes—Titles II and XVI of the Social Security Act.

Published: December 31, 1991, at 56 FR 67625 as AR 91–X(5).

Correction Notice Published: May 1, 1992, at 57 FR 18899—AR number changed to 91–1(5).

AR 92–1(3) *Mazza v. Secretary of Health and Human Services,* 903 F.2d 953 (3d Cir. 1990)—Order of Effectuation in Concurrent Application Cases (Title II/Title XVI).

Published: January 10, 1992, at 57 FR 1190 as AR 91–X(3).

Correction Notice Published: May 1, 1992, at 57 FR 18899—AR number changed to 92–1(3).

AR 92–2(6) *Difford v. Secretary of Health and Human Services,* 910 F.2d 1316 (6th Cir. 1990), *reh 'g denied,* February 7, 1991—Scope of Review on Appeal in a Medical Cessation of Disability Case—Title II of the Social Security Act.

Published: March 17, 1992, at 57 FR 9262.

AR 92–3(4) *Branham v. Heckler,* 775 F.2d 1271 (4th Cir. 1985); *Flowers v. U.S. Department of Health and Human Services,* 904 F.2d 211 (4th Cir. 1990)—What Constitutes a Significant-Work-Related Limitation of Function.

Published: March 10, 1992, at 57 FR 8463. Rescinded-See section on Rescissions in this notice.

AR 92–4(11) *Bloodsworth v. Heckler,* 703 F.2d 1233 (11th Cir. 1983)—Judicial Review of an Appeals Council Dismissal of a Request for Review of an Administrative Law Judge (ALJ) Decision.

Published: April 8, 1992, at 57 FR 11961.

AR 92–5(9) *Quinlivan v. Sullivan,* 916 F.2d 524 (9th Cir. 1990)—Meaning of the Term ''Against Equity and Good Conscience'' in the Rules for Waiver of Recovery of an Overpayment—Titles II and XVI of the Social Security Act; Title IV of the Federal Mine Safety and Health Act of 1977.

Published: June 22, 1992, at 57 FR 27783.

AR 92–6(10) *Walker v. Secretary of Health and Human Services,* 943 F.2d 1257 (l0th Cir. 1991)—Entitlement to Trial Work Period Before Approval of an Award for Benefits and Before Twelve Months Have Elapsed Since Onset of Disability—Titles II and XVI of the Social Security Act.

Published: September 17, 1992, at 57 FR 43007.

AR 92–7(9) *Gonzales v. Sullivan,* 914 F.2d 1197 (9th Cir. 1990)—Effect of Initial Determination Notice Language on the Application of Administrative Finality-Titles II and XVI of the Social Security Act.

Published: September 30. 1992, at 57 FR 45061.

AR 93–1(4) *Branham v. Heckler,* 775 F.2d 1271 (4th Cir. 1985); *Flowers v.*

U.S. Department of Health and Human Services, 904 F.2d 211 (4th Cir. 1990)—What Constitutes an Additional and Significant Work-Related Limitation of Function—Titles II and XVI of the Social Security Act.

Published: April 29, 1993, at 58 FR 25996.

NOTE: The original AR for the Fourth Circuit Court of Appeals' holding in *Branham and Flowers* (AR 92–31(4)), issued March 10, 1992, was revised to reflect a regulatory change regarding the IQ Listing range. There were no other substantive changes to this AR. Rescinded-See section on Rescissions in this notice.

AR 93–2(2) *Conley v. Bowen,* 859 F.2d 261 (2d Cir. 1988)—Determination of Whether an Individual with a Disabling Impairment Has Engaged in Substantial Gainful Activity Following a Reentitlement Period—Title II of the Social Security Act.

Published: May 17, 1993, at 58 FR 28887. Rescinded-See section on Rescissions in this notice.

AR 93–3(6) *Akers v. Secretary of Health and Human Services,* 966 F.2d 205 (6th Cir. 1992)—Attorney's Fees Based in Part on Continued Benefits Paid to Social Security Claimants—Title II of the Social Security Act.

Published: July 29, 1993, at 58 FR 40662. Rescinded-See section on Rescissions in this notice.

AR 93–4(2) *Condon and Brodner v. Bowen,* 853 F.2d 66 (2d Cir. 1988)—Attorney's Fees Based in Part on Continued Benefits Paid to Social Security Claimants—Title II of the Social Security Act.

Published: July 29, 1993, at 58 FR 40663. Rescinded-See section on Rescissions in this notice.

AR 93–5(11) *Shoemaker v. Bowen,* 853 F.2d 858 (11th Cir. 1988)—Attorney's Fees Based in Part on Continued Benefits Paid to Social Security Claimants—Title II of the Social Security Act.

Published: July 29, 1993, at 58 FR 40665. Rescinded-See section on Rescissions in this notice.

AR 93–6(8) *Brewster on Behalf of Keller v. Sullivan,* 972 F.2d 898 (8th Cir. 1992)—Interpretation of the Secretary's Regulation Regarding Presumption of Death—Title II of the Social Security Act

Published: August 16, 1993, at 58 FR 43369. Rescinded-See section on Rescissions in this notice.

AR 94–1(10) *Wolfe v. Sullivan,* 988 F.2d 1025 (10th Cir. 1993)—Contributions to Support re: Posthumous Illegitimate Child—Title II of the Social Security Act.

Published: June 27, 1994, at 59 FR 33003.

AR 94–2(4) *Lively v. Secretary of Health and Human Services,* 820 F.2d 1391 (4th Cir. 1987)—Effect of Prior Disability Findings on Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act—Titles II and XVI of the Social Security Act.

Published: July 7, 1994, at 59 FR 34849. Rescinded-See section on Rescissions in this notice.

AR 95–1(6) *Preslar v. Secretary of Health and Human Services,* 14 F.3d 1107 (6th Cir. 1994)— Definition of Highly Marketable Skills for Individuals Close to Retirement Age—Titles II and XVI of the Social Security Act.

Published: May 4, 1995, at 60 FR 22091. Rescinded-See section on Rescissions in this notice.

AR 95–2(9) *Hodge v. Shalala.* 27 F.3d 430 (9th Cir. 1994)—Workers' Compensation—Proration of a Lump-Sum Award for Permanent Disability Over the Remainder of an Individual's Working Life Under Oregon Workers' Compensation Law—Title II of the Social Security Act.

Published: July 12, 1995, at 60 FR 35987.

AR 96–1(6) *DeSonier v. Sullivan,* 906 F.2d 228 (6th Cir. 1990)—Method of Application of State Intestate Succession Law in Determining Entitlement to Child's Benefits—Title II of the Social Security Act.

Published: June 3, 1996, at 61 FR 27942.

AR 97–1(1) *Parisi By Cooney v. Chater,* 69 F.3d 614 (1st Cir. 1995)—Reduction of Benefits Under the Family Maximum in Cases Involving Dual Entitlement—Title II of the Social Security Act.

Published: January 13, 1997, at 62 FR 1792. Rescinded-See section on Rescissions in this notice.

AR 97–2(9) *Gamble v. Chater,* 68 F.3d 319 (9th Cir. 1995)—Amputation of a Lower Extremity—When the Inability to Afford the Cost of a Prosthesis Meets the Requirements of Section 1.10C of the Listing of Impairments—Titles II and XVI of the Social Security Act.

Published: January 13, 1997, at 62 FR 1791. Rescinded-See section on Rescissions in this notice.

AR 97–3(11) *Daniels on Behalf of Daniels v. Sullivan,* 979 F.2d 1516 (11th Cir. 1992)—Application of a State's Intestacy Law Requirement that Paternity be Established During the Lifetime of the Father—Title II of the Social Security Act.

Published: August 4, 1997, at 62 FR 41989.

AR 97–4(9) *Chavez v. Bowen,* 844 F.2d 691 (9th Cir. 1988)—Effect of a Prior Final Decision That a Claimant is Not Disabled, And of Findings Contained Therein, On Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act—Titles II and XVI of the Social Security Act.

Published: December 3, 1997, at 62 FR 64038.

AR 98–1(8) *Newton v. Chater,* 92 F.3d 688 (8th Cir. 1996)—Entitlement to Trial Work Period Before Approval of an Award for Benefits and Before Twelve Months Have Elapsed Since Onset of Disability—Titles II and XVI of the Social Security Act.

Published: February 23, 1998, at 63 FR 9037. Rescinded-See section on Rescissions in this notice.

AR 98–2(8) *Sird v. Chater,* 105 F.3d 401 (8th Cir. 1997)—Mental Retardation—What Constitutes an Additional and Significant Work-Related Limitation of Function—Titles II and XVI of the Social Security Act.

Published: February 24, 1998, at 63 FR 9279. Rescinded-See section on Rescissions in this notice.

AR 98–3(6) *Dennard v. Secretary of Health and Human Services,* 907 F.2d 598 (6th Cir. 1990)—Effect of a Prior Finding of the Demands of Past Work on Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act—Titles II and XVI of the Social Security Act.

Published: June 1, 1998. at 63 FR 29770.

AR 98–4(6) *Drummond v. Commissioner of Social Security,* 126 F.3d 1337 (6th Cir. 1997)—Effect of Prior Findings on Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act—Titles II and XVI of the Social Security Act.

Published: June 1, 1998, at 63 FR 29771.

AR 98–5(8) *State of Minnesota v. Apfel,* 151 F.3d 742 (8th Cir. 1998)—Coverage for Employees Under a Federal-State Section 218 Agreement or Modification and Application of the Student Services Exclusion From Coverage to Services Performed by Medical Residents—Title II of the Social Security Act.

Published: October 30, 1998, at 63 FR 58444.

AR 99–1(2) *Florez on Behalf of Wallace v. Callahan,* 156 F.3d 438 (2d Cir. 1998)— Supplemental Security Income—Deeming of Income From a Stepparent to a Child When the Natural Parent is Not Living In the Same Household—Title XVI of the Social Security Act.

Published: February 1, 1999, at 64 FR 4923. Rescinded-See section on Rescissions in this notice.

AR 99–2(8) *Kerns v. Apfel,* 160 F.3d 464 (8th Cir. 1998)—Definition of Highly Marketable Skills for Individuals Close to Retirement Age—Titles II and XVI of the Social Security Act.

Published: March 11, 1999, at 64 FR 12205. Rescinded-See section on Rescissions in this notice.

AR 99–3(5) *McQueen v. Apfel,* 168 F.3d 152 (5th Cir. 1999)— Definition of Highly Marketable Skills for Individuals Close to Retirement Age—Titles II and XVI of the Social Security Act.

Published: May 27, 1999, at 64 FR 28853. Rescinded-See section on Rescissions in this notice.

AR 99–4(11) *Bloodsworth v. Heckler,* 703 F.2d 1233 (11th Cir. 1983)—Judicial Review of an Appeals Council Dismissal of a Request for Review of an Administrative Law Judge Decision—Titles II and XVI of the Social Security Act.

Published: October 26, 1999, at 64 FR 57687.

NOTE: The original AR for the Eleventh Circuit Court of Appeals' holding in *Bloodsworth* (AR 92–4(11)), issued April 8, 1992, was revised to delete a parenthetical statement and to update the AR's language. These revisions were technical corrections only and did not involve any substantive changes.

AR 00–1(4) *Albright v. Commissioner of the Social Security Administration,* 174 F.3d 473 (4th Cir. 1999)—Effect of Prior Disability Findings on Adjudication of a Subsequent Disability Claim—Titles II and XVI of the Social Security Act.

Published: January 12, 2000, at 65 FR 1936.

AR 00–2(7) *Hickman v. Apfel.* 187 F.3d 683 (7th Cir. 1999)—Evidentiary Requirements for Determining Medical Equivalence to a Listed Impairment—Titles II and XVI of the Social Security Act.

Published: May 3, 2000, at 65 FR 25783. Rescinded-See section on Rescissions in this notice.

AR 00–3(10) *Haddock v. Apfel,* 196 F.3d 1084 (l0th Cir. 1999)—Use of Vocational Expert Testimony and the Dictionary of Occupational Titles Under 20 CFR 404.1566, 416.966—Titles II and XVI of the Social Security Act.

Published: June 20, 2000, at 65 FR 38312. Rescinded-See section on Rescissions in this notice.

AR 00–4(2) *Curry v. Apfel,* 209 F.3d 117 (2d Cir. 2000)—Burden of Proving Residual Functional Capacity at Step Five of the Sequential Evaluation Process for Determining Disability—Titles II and XVI of the Social Security Act.

Published: September 11, 2000, at 65 FR 54879. Rescinded-See section on Rescissions in this notice.

AR 00–5(6) *Salamalekis v. Apfel,* 221 F.3d 828 (6th Cir. 2000)—Entitlement to Trial Work Period Before Approval of an Award of Benefits and Before 12 Months Have Elapsed Since the Alleged Onset of Disability—Titles II and XVI of the Social Security Act.

Published: November 15, 2000, at 65 FR 69116. Rescinded-See section on Rescissions in this notice.

AR 01–1(3) *Sykes v. Apfel,* 228 F.3d 259 (3d Cir. 2000)—Using the Grid Rules as a Framework for Decisionmaking When an Individual's Occupational Base is Eroded by a Nonexertional Limitation—Titles II and XVI of the Social Security Act.

Published: January 25, 2001, at 66 FR 7829.

AR 03–1(7) *Blakes v. Barnhart,* 331 F.3d 565 (7th Cir. 2003)—Cases Involving Sections 12.05 and 112.05 of the Listing of Impairments That Are Remanded By a Court for Further Proceedings Under Titles II and XVI of the Social Security Act.

Published: December 23, 2003, at 613 FR 74279.

AR 04–1(9) *Howard on behalf of Wolff v. Barnhart,* 341 F.3d 1006 (9th Cir. 2003)—Applicability of the Statutory Requirement for Pediatrician Review in Childhood Disability Cases to the Hearings and Appeals Levels of the Administrative Review Process Under Title XVI of the Social Security Act.

Published: April 26, 2004, at 69 FR 22578.

AR 05–1(9) *Gillett-Netting v. Barnhart,* 371 F.3d 593 (9th Cir. 2004), *reh'g denied,* December 14, 2004 —Applicability of State Law and the Social Security Act in Determining Whether a Child Conceived by Artificial Means after an Insured Person's Death is Eligible for Child's Insurance Benefits—Title II of the Social Security Act.

Published: September 22, 2005, at 70 FR 55656.

AR 06–1(2) *Fowlkes v. Adamec,* 432 F.3d 90 (2d Cir. 2005)—Determining Whether an Individual is a Fugitive Felon Under the Social Security Act (Act)—Titles II and XVI of the Act.

Published: April 6, 2000, at 71 FR 17551.

RESCISSIONS WITHOUT REPLACEMENT ARs

AR 86–1(9) *Summy* v. *Schweiker,* 688 F.2d 1233 (9th Cir. 1982)—Third party payments for medical care or services—Title XVI of the Social Security Act.

Notice of Rescission Published: July 5, 1994, at 59 FR 34444.

AR 86–6(3) *Aubrey v. Richardson,* 462 F.2d 782 (3d Cir. 1972); *Shelnutt v. Heckler,* 723 F.2d 1131 (3d Cir. 1983)—Interpretation of the Secretary's Regulation Regarding Presumption of Death—Title II of the Social Security Act.

Notice of Rescission Published: July 14, 1995, at 60 FR 36327.

AR 86–7(5) *Autrey v. Harris,* 639 F.2d 1233 (5th Cir. 1981); *Wages v. Schweiker,* 659 F.2d 59 (5th Cir. 1981)—Interpretation of the Secretary's Regulation Regarding Presumption of Death—Title II of the Social Security Act.

Notice of Rescission Published: July 14, 1995, at 60 FR 36327.

AR 86–8(6) *Johnson v. Califano,* 607 F.2d 1178 (6th Cir. 1979)—Interpretation of the Secretary's Regulation Regarding Presumption of Death—Title II of the Social Security Act.

Notice of Rescission Published: July 14, 1995, at 60 FR 36327.

AR 86–9(9) *Secretary of Health, Education and Welfare v. Meza,* 386 F.2d 389 (9th Cir. 1966); *Gardner v. Wilcox,* 370 F.2d 492 (9th Cir. 1966)—Interpretation of the Secretary's Regulation Regarding Presumption of Death—Title II of the Social Security Act.

Notice of Rescission Published: July 14, 1995, at 60 FR 36327.

AR 86–10(10) *Edwards v. Califano,* 619 F.2d 865 (10th Cir. 1980)—Interpretation of the Secretary's Regulation Regarding Presumption of Death—Title II of the Social Security Act.

Notice of Rescission Published: July 14, 1995, at 60 FR 36327.

AR 86–11(11) *Autrey v. Harris,* 639 F.2d 1233 (5th Cir. 1981)—Interpretation of the Secretary's Regulation Regarding Presumption of Death—Title II of the Social Security Act.

Notice of Rescission Published: July 14, 1995, at 60 FR 36327.

AR 86–17(9) *Owens v. Schweiker,* 692 F.2d 80 (9th Cir. 1982)—Child's Benefits—Title II of the Social Security Act.

Notice of Rescission Published: October 28, 1998, at 63 FR 57727.

AR 87–1(6) *Webb v. Richardson,* 472 F.2d 529 (6th Cir. 1972)—Attorneys' Fees—Single Fee, Not to Exceed 25 Percent of Past-Due Benefits, Set by Tribunal Which Ultimately Upholds the Claim—Title II of the Social Security Act.

Notice of Rescission Published: March 3, 1995, at 60 FR 11977.

AR 87–2(11) *Butterworth v. Bowen,* 796 F.2d 1379 (11th Cir. 1986)—The

Conditions under Which the Appeals Council has the Right to Reopen and Revise Prior Decisions—Titles II and XVI of the Social Security Act.

Notice of Rescission Published: July 7, 1998, at 63 FR 36726.

AR 87–3(9) *Hart v. Bowen,* 799 F.2d 567 (9th Cir. 1986)—Current Market Value of an Installment Sales Contract as an Excess Resource.

Notice of Rescission Published: February 9, 1995, at 60 FR 7782.

AR 87–4(8) *Iamarino v. Heckler,* 795 F.2d 59 (8th Cir. 1986)—Positive Presumption of Substantial Gainful Activity (SGA) for Sheltered Work.

Notice of Rescission Published: July 11, 2000, at 65 FR 42793.

AR 87–5(3) *Velazquez v. Heckler,* 802 F.2d 680 (3d Cir. 1986)—Consideration of Vocational Factors in Past Work Determination.

Notice of Rescission Published: July 16, 1990, at 55 FR 28943.

AR 88–1(11) *Patterson v. Bowen,* 799 F.2d 1455 (11th Cir. 1986), *reh'g denied,* February 12, 1987—Use of the Age Factor in the Medical-Vocational Guidelines in Making Disability Decisions.

Notice of Rescission Published: April 6, 2000, at 65 FR 18143.

AR 88–3(7) *McDonald v. Bowen,* 800 F.2d 153 (7th Cir. 1986), *amended on reh'g,* 818 F.2d 559 (7th Cir. 1987)—Entitlement to Benefits Where a Person Returns to Work Less Than 12 Months After Onset of Disability.

Notice of Rescission Published: June 10, 2002, at 67 FR 39781.

AR 88–5(1) *McCuin v. Secretary of Health and Human Services,* 817 F.2d 161 (1st Cir. 1987)—Reopening by the Appeals Council of Decisions of Administrative Law Judges under Titles II and XVI of the Social Security Act.

Notice of Rescission Published: February 23, 1994, at 59 FR 8650.

AR 88–7(5) *Hickman v. Bowen,* 803 F.2d 1377 (5th Cir. 1986)—Evaluation of Loans of In-Kind Support and Maintenance for Supplemental Security Income Benefit Calculation Purposes.

Notice of Rescission Published: September 8, 1992, at 57 FR 40918.

AR 90–1(9) *Paxton v. Secretary of Health and Human Services,* 856 F .2d 1352 (9th Cir.1988)—Treatment of Dependent's Portion of Augmented Veterans Benefit Paid Directly to Veteran—Title XVI of the Social Security Act.

Notice of Rescission Published: November 17, 1994, at 59 FR 59416.

AR 90–3(4) *Smith v. Bowen,* 837 F.2d 635 (4th Cir. 1987)—Use of Vocational Expert or Other Vocational Specialist in Determining Whether a Claimant Can Perform Past Relevant Work—Titles II and XVI of the Social Security Act.

Notice of Rescission Published: August 26, 2003, at 68 FR 51317.

AR 90–5(2) *Kier v. Sullivan,* 888 F.2d 244 (2d Cir. 1989), *reh'g denied,* January 22, 1990—Assessment of Residual Functional Capacity in Disabled Widows' Cases—Title II of the Social Security Act.

Notice of Rescission Published: May 22, 1991, at 56 FR 23592.

AR 90–6(1) *Cassas v. Secretary of Health and Human Services,* 393 F.2d 454 (1st Cir. 1990), *reh'g denied,* April 9, 1990—Assessment of Residual Functional Capacity in Disabled Widows' Cases—Title II of the Social Security Act.

Notice of Rescission Published: May 22, 1991, at 56 FR 23591.

AR 90–7(9) *Ruff v. Sullivan,* 907 F.2d 915 (9th Cir. 1990)—Assessment of Residual Functional Capacity in Disabled Widows' Cases—Title II of the Social Security Act.

Notice of Rescission Published: May 22, 1991, at 56 FR 23592.

AR 92–3(4) *Branham v. Heckler,* 775 F.2d 1271 (4th Cir. 1985); *Flowers v. U.S. Department of Health and Human Services,* 904 F.2d 211 (4th Cir. 1990)—What Constitutes a Significant Work-Related Limitation of Function.

Notice of Rescission Published: August 21, 2000, at 65 FR 50784.

AR 92–6(10) *Walker v. Secretary of Health and Human Services,* 943 F.2d 1257 (10th Cir. 1991)—Entitlement to Trial Work Period Before Approval of an Award for Benefits and Before Twelve Months Have Elapsed Since Onset of Disability-Titles II and XVI of the Social Security Act.

Notice of Rescission Published: June 10, 2002, at 67 FR 39871.

AR 93–1(4) *Branham v. Heckler,* 775 F.2d 1271 (4th Cir. 1985); *Flowers v. U.S. Department of Health and Human Services,* 904 F.2d 211 (4th Cir. 1990)—What Constitutes an Additional and Significant Work-Related Limitation of Function—Titles II and XVI of the Social Security Act.

Notice of Rescission Published: August 21, 2000, at 65 FR 50784.

AR. 93–2(2) *Conley v. Bowen,* 859 F.2d 261 (3d Cir. 1988)—Determination of Whether an Individual With a Disabling Impairment Has Engaged in Substantial Gainful Activity Following a Reentitlement Period—Title II of the Social Security Act.

Notice of Rescission Published: August 10, 2000, at 65 FR 42793.

AR 93–3(6) *Akers v. Secretary of Health and Human Services,* 966 F.2d 205 (6th Cir. 1992)—Attorney's Fees Based in Part on Continued Benefits Paid to Social Security Claimants—Title II of the Social Security Act.

Notice of Rescission Published: April 14, 2000, at 65 FR 20239.

AR 93–4(2) *Condon and Brodner v. Bowen,* 853 F.2d 66 (2d Cir. 1988)—Attorney's Fees Based in Part on Continued Benefits Paid to Social Security Claimants—Title II of the Social Security Act.

Notice of Rescission Published: April 14, 2000, at 65 FR 20239.

AR 93–5(11) *Shoemaker v. Bowen,* 853 F.2d 858 (11th Cir. 1988)—Attorney's Fees Based in Part on Continued Benefits Paid to Social Security Claimants—Title II of the Social Security Act.

Notice of Rescission Published: April 14, 2000, at 65 FR 20239.

AR 93–6(8) *Brewster on Behalf of Keller v. Sullivan,* 972 F.2d 898 (8th Cir. 1992)—Interpretation of the Secretary's Regulation Regarding Presumption of Death—Title II of the Social Security Act.

Notice of Rescission Published: July 14, 1995, at 60 FR 36327.

AR 94–2(4) *Lively v. Secretary of Health and Human Services,* 820 F.2d 1391 (4th Cir. 1987)—Effect of Prior Disability Findings on Adjudication of a Subsequent Disability Claim Arising Under the Same Title of the Social Security Act—Titles II and XVI of the Social Security Act.

Notice of Rescission Published: January 12, 2000, at 65 FR 1936.

AR 95–1(6) *Preslar v. Secretary of Health and Human Services,* 14 F.3d 1107 (6th Cir. 1994)—Definition of Highly Marketable Skills for Individuals Close to Retirement Age—Titles II and XVI of the Social Security Act.

Notice of Rescission Published: April 6, 2000, at 65 FR 18144.

AR 97–1(1) *Parisi By Cooney v. Chater,* 69 F.3d 814 (1st Cir. 1995)—Reduction of Benefits Under the Family Maximum In Cases Involving Dual Entitlement—Title II of the Social Security Act.

Notice of Rescission Published: October 27, 1999, at 64 FR 57919.

AR 97–2(9) *Gamble v. Chater,* 68 F.3d 319 (9th Cir. 1995)—Amputation of a Lower Extremity—When the Inability to Afford the Cost of a Prosthesis Meets the Requirements of Section 1.10C of the Listing of Impairments—Titles II and XVI of the Social Security Act.

Notice of Rescission Published: November 19, 2001, at 66 FR 58047.

AR 98–1(8) *Newton v. Chater,* 92 F.3d 688 (8th Cir. 1996)—Entitlement to Trial Work Period Before Approval of an Award for Benefits and Before Twelve Months Have Elapsed Since Onset of Disability—Titles II and XVI of the Social Security Act.

Notice of Rescission Published: June 10, 2002, at 67 FR 39781.

AR 98–2(8) *Sird v. Chater,* 105 F.3d 401 (8th Cir. 1997)—Mental Retardation—What Constitutes an Additional and Significant Work-Related Limitation of Function—Titles II and XVI of the Social Security Act.

Notice of Rescission Published: August 21, 2000, at 65 FR 50784.

AR 99–1(2) *Florez on Behalf of Wallace v. Callahan,* 156 F.3d 438 (2d Cir. 1998)— Supplemental Security Income—Deeming of Income From a Stepparent to a Child When the Natural Parent is Not Living in the Same Household—Title XVI of the Social Security Act.

Notice of Rescission Published: May 15, 2008, at 73 FR 28181.

AR 99–2(8) *Kerns v. Apfel,* 160 F.3d 164 (8th Cir. 1998)—Definition of Highly Marketable Skills for Individuals Close to Retirement Age—Titles II and XVI of the Social Security Act.

Notice of Rescission Published: April 6, 2000, at 65 FR 18144.

AR 99–3(5) *McQueen v. Apfel,* 168 F.3d 152 (5th Cir, 1999)—Definition of Highly Marketable Skills for Individuals Close to Retirement Age—Titles II and XVI of the Social Security Act.

Notice of Rescission Published: April 6, 2000, at 65 FR 18144.

AR 00–2(7) *Hickman v. Apfel,* 187 F.3d 683 (7th Cir. 1999)—Evidentiary Requirements for Determining Medical Equivalence to a Listed Impairment—Titles II and XVI of the Social Security Act.

Notice of Rescission Published: March 1, 2006, at 71 FR 10584.

AR 00–3(10) *Haddock v. Apfel,* 196 F.3d 1084 (10th Cir, 1999)—Use of Vocational Expert Testimony and the Dictionary of Occupational Titles Under 20 CFR 404.1566, 416.966—Titles II and XVI of the Social Security Act.

Notice of Rescission Published: December 4, 2000, at 65 FR 75758.

AR 00–4(2) *Curry v. Apfel,* 209 F.3d 117 (2d Cir. 2000)—Burden of Proving Residual Functional Capacity at Step Five of the Sequential Evaluation Process for Determining Disability—Titles II and XVI of the Social Security Act.

Notice of Rescission Published: August 26, 2003, at 68 FR 51317.

AR 00–5(6) *Salamalekis v. Apfel,* 221 F.3d 828 (6th Cir. 2000)—Entitlement to Trial Work Period Before Approval of an Award of Benefits and Before 12 Months Have Elapsed Since the Alleged Onset of Disability—Titles II and XVI of the Social Security Act.

Notice of Rescission Published: June 10, 2002, at 67 FR 39781.

Dated: March 20, 2012.

LaTina Burse Greene,

Assistant Deputy Commissioner for Retirement and Disability Policy.

[FR Doc. 2012–7182 Filed 3–26–12; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 7812]

Culturally Significant Objects Imported for Exhibition Determinations: ''Decree Stele''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object to be included in the exhibition ''Decree Stele'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Getty Villa, Pacific Palisades, CA, from on or about April 25, 2012, until on or about March 30, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including the art object list, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: March 20, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–7348 Filed 3–26–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7833]

Culturally Significant Objects Imported for Exhibition

Determinations: ''Roy Lichtenstein: A Retrospective''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Roy Lichtenstein: A Retrospective'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Art Institute of Chicago, Chicago, IL, from on or about May 16, 2012, until on or about September 3, 2012; The National Gallery of Art, Washington, DC, from on or about October 14, 2012, until on or about January 6, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: March 20, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–7349 Filed 3–26–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7812]

Industry Advisory Panel: Notice of Open Meeting

The Industry Advisory Panel of the Bureau of Overseas Buildings

Operations will meet on Tuesday, April 17, 2012 from 10 a.m. until 3:30 p.m. Eastern Daylight Time. The meeting is open to the public and will be held in the Loy Henderson Conference Room of the U.S. Department of State, located at 2201 C Street NW., (entrance on 23rd Street) Washington, DC. For logistical and security reasons, it is imperative that everyone enter and exit using only the 23rd Street entrance.

The majority of the meeting will be devoted to an exchange of ideas between the Department's senior management and the panel members on design, operations, and building maintenance, with a focus on the new Design Excellence initiative. There will be reasonable time provided for members of the public to provide comment.

Entry to the building is controlled; to obtain pre-clearance, a member of the public planning to attend should provide, by April 6, his or her name, professional affiliation, date of birth, citizenship, and a valid government-issued ID number (i.e., U.S. government ID, U.S. military ID, passport, or drivers license) via email to: *IAPR@state.gov.* Requests for reasonable accommodation should be sent to the same email address by April 6. Requests made after that date will be considered, but may not be able to be fulfilled.

Personal data is requested pursuant to Pub.L. 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Pub.L. 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information.

Please contact Christy Foushee at *FousheeCT@state.gov* or (703) 875–4131 with any questions.

Dated: March 13, 2012.

Lydia Muniz,

Director, Acting, U.S. Department of State, Bureau of Overseas Buildings Operations.

[FR Doc. 2012–7346 Filed 3–26–12; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice: 7834]

Notice of U.S. Hosting of 2012–2013 United States-Mexico Binational Bridges and Border Crossings Meetings; Executive Order 11423, as Amended

AGENCY: Bureau of Western Hemisphere Affairs; Department of State.

ACTION: Notice.

SUMMARY: The Department of State hereby gives notice that the United States will host the 2012 series of U.S.-Mexico Binational Bridges and Border Crossings Meetings. The United States has not yet determined the actual dates and locations of the meetings, but expects to host one in summer 2012 and one in the fall/winter 2012, with a plenary session in early 2013. These binational meetings will typically include an open session for those members of the public who are registered to attend the event. The Department of State welcomes public participation in the public sessions. To request notification of the dates and locations of upcoming meetings, please provide your name and email address to the Office of Mexican Affairs' Border Affairs Unit via email at *WHA-BorderAffairs@state.gov* or by mail at WHA/MEX—Room 3908, U.S. Department of State, 2201 C Street NW., Washington, DC 20520.

DATES: There is no deadline. Requests to be notified will be accepted throughout the year.

FOR FURTHER INFORMATION CONTACT: Angela Palazzolo of the Office of Mexican Affairs' Border Affairs Unit at 202–647–1202 or via email at *WH-BorderAffairs@state.gov*.

Dated: March 21, 2012.

Colleen Hoey,

Acting Director, Office of Mexican Affairs, Department of State.

[FR Doc. 2012–7352 Filed 3–26–12; 8:45 am]

BILLING CODE 4710–29–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dispute No. WTO/DS430]

WTO Dispute Settlement Proceeding Regarding India—Measures Concerning the Importation of Certain Agricultural Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that on March 6, 2012, the United States requested consultations with the Government of India under the *Marrakesh Agreement Establishing the World Trade Organization* (''WTO Agreement'') concerning antidumping measures prohibitions imposed by India on the importation of various agricultural products from the United States purportedly because of concerns related to Avian Influenza. That request may be found at *www.wto.org* contained in a document designated as WT/DS430/1. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before April 19, 2012, to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *www.regulations.gov,* docket number USTR–2012–0004. If you are unable to provide submissions by *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Mayur R. Patel, Assistant General Counsel, or Micah Myers, Assistant General Counsel, Office of the United States Trade Representative 600 17th Street NW., Washington, DC 20508, (202) 395–3150.

SUPPLEMENTARY INFORMATION: USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (''DSU''). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by the United States

On March 6, 2012, the United States requested consultations concerning measures imposed by India prohibiting the importation of various agricultural products from the United States

purportedly because of concerns related to Avian Influenza. The United States is alleging that India's measures appear to be inconsistent with Articles I and XI of the *General Agreement on Tariffs and Trade 1994* (''GATT 1994'') and Articles 2.2, 2.3, 3.1, 5.1, 5.2, 5.5, 5.6, 5.7, 6.1, 6.2, 7, and Annex B, paragraphs 2, 5, and 6 of the *Agreement on the Application of Sanitary and Phytosanitary Measures.*

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *www.regulations.gov* docket number USTR–2012–0004. If you are unable to provide submissions by *www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *www.regulations.gov,* enter docket number USTR–2012–0004 on the home page and click ''search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Submit a Comment.'' (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.)

The *www.regulations.gov* site provides the option of providing comments by filling in a ''Type Comments'' field, or by attaching a document using an ''upload file'' field. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''Type Comments'' field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding accessible to the public at *www.regulations.gov,* docket number USTR–2012–0004.

The public file will include non-confidential comments received by USTR from the public with respect to the dispute. If a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute, will be made available to the public on USTR's Web site at *www.ustr.gov,* and the report of the panel, and, if applicable, the report of the Appellate Body, will be available on the Web site of the World Trade Organization, *www.wto.org.* Comments open to public inspection may be viewed on the *www.regulations.gov* Web site.

Bradford L. Ward,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2012–7309 Filed 3–26–12; 8:45 am]

BILLING CODE 3190–W2–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Noise, Fuel Burn, and Emissions Modeling Using the Aviation Environmental Design Tool Version 2a

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Policy Statement.

SUMMARY: This document provides a statement of FAA policy concerning the required use of the Aviation Environmental Design Tool version 2a (AEDT 2a) to analyze noise, fuel burn, and emissions for FAA air traffic airspace and procedure actions where the study area is larger than the immediate vicinity of an airport, incorporates more than one airport, or includes actions above 3,000 feet above ground level (AGL). The policy statement is intended to ensure consistency and quality of analysis performed to assess noise, fuel burn, and emissions impacts of such actions under the National Environmental Policy Act of 1969 (NEPA), as amended, 42 United States Code (U.S.C.) §§ 4321 et seq.

DATES: Effective March 21, 2012.

FOR FURTHER INFORMATION CONTACT: Rebecca Cointin, Office of Environment and Energy (AEE), Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591; Telephone: (202) 493–5047.

SUPPLEMENTARY INFORMATION:

Background: FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, describes FAA policies and procedures for compliance with the National Environmental Policy Act (NEPA).

Under FAA Order 1050.1E, Appendix A, Section 2.4c, states ''the [Emissions and Dispersion Modeling System] EDMS is FAA's required methodology for performing air quality analysis modeling for aviation sources.'' Section 2.4d states that ''[e]xcept for air toxics or where advance written approval has been granted to use an equivalent methodology and computer model by the FAA Office of Environment and Energy, the air quality analyses for aviation emission sources from airport and FAA proposed projects conducted to satisfy NEPA, general conformity, and 49 USC 47106(c) requirements under the Clean Air Act Amendments of 1990 (as amended) must be prepared using the most recent EDMS model available at the start of the environmental analysis process.''

FAA Order 1050.1E, Appendix A, Section 13.2a describes the FAA policy to conserve resources such as energy, and the requirement ''to identify any proposed major changes in stationary facilities or the movement of aircraft and ground vehicles that would have a measurable effect on local supplies of energy or natural resources.''

FAA Order 1050.1E, Appendix A, Section 14.5e states that for ''air traffic airspace actions where the study area is larger than the immediate vicinity of an airport, incorporates more than one airport, or includes actions above 3,000 feet [Above Ground Level—AGL], noise modeling will be conducted using [the Noise Integrated Routing System—NIRS].''

The FAA developed the AEDT 2a to model aircraft noise, fuel burn, and emissions for air traffic airspace and procedure actions for which the use of NIRS is currently required. AEDT 2a has the capability to model aircraft performance based on fleet mix, airport configuration, and operations schedule. These data are used to compute aircraft noise, fuel burn and emissions simultaneously. By standardizing these data, AEDT 2a will help FAA stakeholders make more informed decisions on specific environmental impacts of aviation.

Policy Statement

Effective March 21, 2012, AEDT 2a is the required tool for noise, fuel burn, and emissions modeling of air traffic airspace and procedure actions where the study area is larger than the immediate vicinity of an airport, incorporates more than one airport, or includes actions above 3,000 feet AGL. Consistent with current FAA policy and practice, the use of AEDT 2a is not required for projects whose analysis began before the effective date of this policy. In the event AEDT 2a is updated after the environmental analysis process if underway, the updated version may, but need not, be used to provide additional disclosure concerning noise, fuel burn, and emissions.

FAA–AEE has approved AEDT 2a as an ''equivalent methodology'' to EDMS for developing aircraft-only emissions inventories when required for air traffic airspace and procedure actions.

FAA–AEE has approved AEDT 2a to analyze fuel burn to inform the discussion of energy impacts and to assist in assessing greenhouse gas emissions for air traffic airspace and procedure actions.

FAA–AEE has issued AEDT 2a to replace NIRS as the required tool to analyze noise and fuel burn for air traffic airspace and procedure actions.

This policy statement is issued to ensure consistency and quality of analysis performed to comply with requirements under the National Environmental Policy Act of 1969 (NEPA), as amended, 42 United States Code (U.S.C.) §§ 4321 et seq.

Issued in Washington, DC, on March 21, 2012.

Lourdes Q. Maurice,

Executive Director, Office of Environment and Energy.

[FR Doc. 2012–7354 Filed 3–26–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA 2012–0074]

Improvements to the Compliance, Safety, Accountability (CSA) Motor Carrier Safety Measurement System (SMS)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for public comment.

SUMMARY: FMCSA announces planned improvements to the Carrier Safety Measurement System (SMS) which was implemented in December 2010 as part of the Agency's broader Compliance, Safety, Accountability (CSA) initiative. A preview of these improvements will be available to motor carriers and law enforcement on March 27, 2012. The system changes are scheduled to be available to the public in July 2012. There will be additional opportunity for public comment on the changes after the preview period ends in July 2012.

The improvements to SMS announced in this notice are based on ongoing analysis and feedback from enforcement personnel, the motor carrier industry, and other stakeholders. The changes more effectively identify and prioritize high-risk and other unsafe motor carriers for enforcement interventions designed to reduce commercial motor vehicle crashes and hazardous materials incidents.

Starting on March 27, 2012, FMCSA will provide motor carriers with the ability to preview how the improvements impact their individual safety data in SMS. These improvements include: (1) Changes to the SMS methodology that identify higher risk carriers while addressing industry biases; (2) better applications of SMS results for Agency interventions by more accurately identifying safety sensitive carriers (i.e., carriers transporting people and carriers hauling hazardous materials (HM)), so that such firms can be selected for CSA interventions at more stringent levels; and, (3) more specific fact-based displays of SMS results on the SMS Web site.

The data preview may be found at *http://csa.fmcsa.dot.gov/.* During the data preview period, the Agency requests comments on the impacts of the changes.

DATES: Comments must be received on or before May 29, 2012.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2012–0074 by 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 Management Facility, (M–30), U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., West Building, Ground Floor, Room 12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. All submissions must include the Agency name and docket number for this notice. See the ''Public Participation'' heading below for instructions on submitting comments and additional information.

Note that all comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov.* 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* at any time or to Room W12–140 on the ground floor of the DOT Headquarters Building at 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

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 Privacy Act System of Records Notice for the DOT Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit

http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.

Public Participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site. 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. Bryan Price, Federal Motor Carrier Safety Administration, 1000 Liberty Avenue, Suite 1300, Pittsburgh, PA 15222, Telephone 412–395–4816, E-Mail: *bryan.price@dot.gov.*

SUPPLEMENTARY INFORMATION: In December 2010, FMCSA implemented SMS to identify high-risk motor carriers for on-site investigations consistent with Section 4138 of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act, and Public Law 109–59 (Aug.10, 2005) (SAFETEA–LU).

SMS is also used to identify and prioritize motor carriers for less resource intensive interventions, such as automated warning letters, and serves as a principal factor in roadside inspection software designed to recommend motor carriers with known performance and compliance problems for additional inspections. Furthermore, SMS now provides motor carriers and other safety stakeholders with regularly updated safety performance data available through the public Web site *http://ai.fmcsa.dot.gov/SMS.*

Select intervention efficiency and effectiveness concepts from the intervention component of the CSA model were also implemented nationally in December 2010. These concepts include:

1. Automated Warning Letters;
2. Focused Compliance Reviews;
3. Direct Notices of Violation (NOV);
4. Investigation of Red Flag Driver Violations during all Compliance Reviews; and
5. Selection of drivers for examination during carrier investigations based on an internal selection system (the Driver Safety Management System).

Elements of the CSA model that remain to be implemented in future phases include more comprehensive implementation of the full suite of CSA interventions (e.g., off-site investigations and cooperative safety plans (CSPs)) and the Notice of Proposed Rulemaking (NPRM) recommending an improved approach to safety fitness determinations of motor carriers.

The Agency also uses this notice to discuss its evaluation of crash weighting in SMS. FMCSA is looking at various options within SMS to identify carriers that have the greatest risk of future crashes. As part of this effort, FMCSA has been looking at methods for determining crash preventability and accountability, and how crashes would be weighted in SMS. The increased weighting would identify carriers that are causing crashes, and prioritize them for intervention. In researching this issue, FMCSA identified several areas where additional data and further study are needed before moving forward with a proposal on the weighting of crashes in SMS. These areas include evaluating the uniformity and consistency of police accident reports; determining a process for assessing crashes in a uniform and consistent manner; creating a process for accepting public input into the process; and determining the actual effect on SMS's ability to identify carriers that have a high risk of crashes. As a result, the Agency is conducting additional research and analysis to determine the feasibility of different weighting for crashes in SMS based on an objective set of criteria.

Safety Measurement System

SMS quantifies the safety performance of motor carriers using data available in FMCSA's motor carrier database, the Motor Carrier Management Information System (MCMIS). This database includes violations found during roadside inspections, traffic enforcement, and the intervention process. SMS currently groups these data into seven Behavioral Analysis Safety Improvement Categories (BASICs): Unsafe Driving, Fatigued Driving (Hours-of-Service), Driver Fitness, Controlled Substances and Alcohol, Vehicle Maintenance, Cargo Related, and Crash History. For further detailed information on the current structure of SMS, see the SMS Methodology at *http://csa.fmcsa.dot.gov.*

SMS currently has sufficient data to assess the safety performance of approximately 200,000 of the 525,000 active interstate and intrastate HM motor carriers in FMCSA's census files (approximately 38 percent). FMCSA's analysis showed that the 200,000 carriers assessed in the March 2011 run of SMS were involved in over 90% of the crashes reported to FMCSA from April to June 2011. Of those 200,000 carriers, over 50,000 exceeded the intervention threshold in at least one BASIC and were identified for Agency interventions. Additionally, these 50,000 carriers (approximately 10 percent of the total active population) were responsible for 45% percent of the recorded crashes. FMCSA's analysis, therefore, found very strong associations between future crash risk and high percentiles in the Unsafe Driving, Fatigued Driving (Hours of Service), and Crash BASICs of SMS.

Independent evaluation of SMS data by the University of Michigan Transportation Research Institute (UMTRI) determined that crash rates were higher for motor carriers identified with safety problems in SMS's seven BASICs. In particular, UMTRI found that motor carriers falling above FMCSA's intervention threshold in the Unsafe Driving BASIC had crash rates that were more than three times greater than the crash rate for motor carriers without any BASICs above FMCSA's intervention threshold. Similarly, UMTRI found that the crash rate for motor carriers above FMCSA's intervention threshold in the Fatigued Driving (Hours of Service) BASIC was nearly three times greater than the crash rate for motor carriers without any BASICs above FMCSA's intervention threshold. Details on the full UMTRI report can be found at *http://csa.fmcsa.dot.gov/about/UMTRI.aspx.*

From the start of CSA, FMCSA expected to modify SMS as new data and additional analyses became available. To date, FMCSA has made a number of enhancements to SMS based on feedback from State partners, industry, and safety advocates.

Moving forward, FMCSA plans to apply a systematic approach to making improvements to SMS, prioritizing and releasing packages of improvements as needed, and providing an SMS preview period for law enforcement and motor carriers prior to implementation. These improvements are the Agency's response to findings from its ongoing analyses of data, input from law enforcement, the motor carrier industry, and other safety stakeholders. This package of SMS enhancements includes:

1. Strengthening the Vehicle Maintenance BASIC by moving cargo/load securement violations from the Cargo-Related BASIC to the Vehicle Maintenance BASIC;
2. Simultaneously renaming the Cargo-Related BASIC the HM BASIC, which will better identify HM-related safety problems and change how HM carriers are classified to allow for increased intervention scrutiny;
3. Better aligning SMS with Intermodal Equipment Provider (IEP) regulations;
4. Aligning violations that are included in SMS with the Commercial Vehicle Safety Alliance (CVSA) inspection levels by eliminating the vehicle violations derived from driver-

only inspections and driver violations from vehicle-only inspections;

5. Improving the identification of passenger carriers; and

6. Modifying the SMS Web site display to:

a. Change current terminology, including the terms ''Insufficient Data'' and ''Inconclusive,'' to fact-based definitions that clarify the carrier's status in each BASIC;

b. Distinguish between crashes with injuries and crashes with fatalities.

Individual motor carriers will have an opportunity to preview their performance data so that they can determine the impact of SMS improvements on their company's information in advance of the public release. The Agency also seeks comments on the impacts of these changes. To view their company's data, motor carriers will have to enter their Personal Identification Number (PIN). Motor carriers that do not have a PIN, or those that have forgotten their PIN, can go to the following web address for assistance: *https://li-public.fmcsa.dot.gov/LIVIEW/PKG_PIN_START.PRC_INTRO.*

Following the preview period, FMCSA may further refine the new methodology before implementation and release of the revised SMS results to the public. The Agency addresses each of these improvements in turn below.

Incorporate Cargo/Load Securement Violations Into the Vehicle Maintenance BASIC

Motor carrier industry and enforcement stakeholders have noted that motor carriers predominantly operating open deck trailers (e.g., flatbeds) have significantly higher Cargo-Related BASIC percentiles than those for other groups of operators, because load securement issues for these types of carriers are more readily apparent during roadside inspections. Based on this potential bias, FMCSA has not made the Cargo-Related BASIC performance data available to the public.

While cargo/load securement violations comprise 82% of violations recorded in the Cargo-Related BASIC, they comprise just 4% of violations when included in the Vehicle Maintenance BASIC. FMCSA compared the flatbed bias of the current Cargo-Related BASIC with a modified Vehicle Maintenance BASIC. The analysis determined that while the Cargo-Related BASIC identified 66% of flatbed carriers (as identified by industry and FMCSA field staff) as above the intervention threshold in that BASIC, the modified Vehicle Maintenance BASIC identified only 21% of these carriers as above the intervention threshold. FMCSA also examined the carriers identified above the intervention threshold (i.e., those in the 80th percentile) in the current Cargo-Related and Vehicle Maintenance BASICs and compared them to carriers identified under the proposed new Vehicle Maintenance BASIC. Carriers identified under the new Vehicle Maintenance BASIC had over a 20% higher crash rate. The analysis showed that this approach (1) identifies carriers with a higher crash risk for Agency interventions and (2) effectively addresses the bias associated with carriers that haul open trailers while still holding all carriers accountable for all cargo securement violations.

Change the Cargo-Related BASIC to the HM BASIC and Change How HM Carriers Are Identified

The presence of HM can greatly exacerbate the consequences of crashes and cargo spills. Because the current Cargo-Related BASIC includes both HM violations and load securement violations, some motor carriers with HM compliance issues do not rise above the FMCSA's intervention threshold due to the relative weight of general cargo securement violations.

FMCSA consulted with enforcement subject matter experts to identify and apply severity weightings to the 239 HM violations contained in the Cargo-Related BASIC and 112 additional HM safety-based violations attributable to the motor carrier. The Agency then conducted effectiveness testing to compare the Cargo-Related BASIC with a new BASIC for carriers transporting HM requiring placards to determine which configuration better identified carriers with a high risk of future HM safety violations. The analysis found that the new HM BASIC better identified carriers that would commit future HM violations than the current Cargo-Related BASIC.

In addition, FMCSA plans to change how carriers are classified as HM carriers to allow increased intervention scrutiny. In August 2011, the criteria for identifying carriers subject to the more stringent HM intervention thresholds were changed to any carrier with HM activity (i.e., a placarded HM inspection, review, or permit) in the past two years rather than identifying carriers based on the HM commodities noted on the MCS–150 registration form. Under these criteria, it was determined that some carriers inadvertently transport placarded HM loads or that an extremely small percentage of their loads involved placarded HM. FMCSA conducted an analysis to establish new criteria for excluding carriers that transport HM as a minimal part of their business. These criteria took two forms: (1) requiring HM activity within the last 24 months, excluding carriers that have not transported HM in over a year, and (2) requiring that placardable HM inspections constitute a sizable proportion of the carrier's total inspections. This change resulted in exclusion of approximately 11,500 of the 24,000 carriers currently subject to HM thresholds, while still encompassing 94% of the placardable HM inspections recorded in the past 24 months.

FMCSA is applying the new criteria to focus intervention resources on carriers involved in the transportation of HM requiring placards. For a carrier to be subject to the HM threshold, that carrier must have at least two inspections on a vehicle transporting HM requiring placards, within the past 24 months, with one inspection occurring within the past 12 months, and making up at least five percent of the motor carrier's total inspections. In addition, any motor carrier that has an FMCSA HM safety permit or that has been identified as a carrier of placarded quantities of HM from an investigation in the last 24 months will be subject to the increased intervention scrutiny.

The methodology applies a more stringent intervention threshold for these carriers transporting HM. The Agency created a new HM BASIC that includes only HM-related violations and inspections on carriers involved in the transportation of HM requiring placards. This change allows the Agency to better identify HM-related safety issues for CSA interventions.

Apply Carrier-Based Violations on Intermodal Equipment Provider (IEP) Trailers to the Vehicle BASIC

Currently, SMS does not include any roadside violations on an intermodal chassis when there is an associated IEP. FMCSA chose not to include these violations in the first versions of SMS because FMCSA was still in the process of identifying those violations attributable to the motor carrier and those attributable to the IEP. Section 390.44 of title 49, Code of Federal Regulations, states that an IEP will not be held responsible for such violations because a motor carrier indicated pursuant to 49 CFR 392.7(b) that the chassis components, parts, or accessories had no safety defects at the time of the pre-trip inspection. Because of this, some of the violations found during a roadside inspection will be the

responsibility of the motor carrier. For example, when an IEP interchanges a chassis with a motor carrier, the driver is required under 49 CFR 392.7(b) to conduct a pre-trip inspection to determine if that chassis is in good working order. If defects are found during the pre-trip inspection, the driver has the opportunity to alert the IEP of such defects. The IEP, in turn, is required to either repair the defect or replace the equipment prior to the driver's departure. Violations that should have been detected during a pre-trip inspection but are later found during a roadside inspection become the responsibility of the motor carrier and thus should be applied in SMS.

FMCSA worked collaboratively with law enforcement officials and industry personnel, both on the motor carrier and IEP sides, to identify the violations that could reasonably be found during a pre-trip inspection of an IEP chassis. A copy of the violation attribution decision process and associated violations can be found on our web site at *www.fmcsa.dot.gov/documents/rulesregs/IEP/Visio-Violation-Attribution-07182011_508.pdf.*

In cases where (1) the driver conducted a pre-trip inspection, and (2) the violation is considered pre-trip detectable, the violation is attributed to the motor carrier. FMCSA applied this rule to the past 24 months of roadside inspections, resulting in approximately 22,000 violations included in the SMS Vehicle Maintenance BASIC.

Eliminate Vehicle Violations From ''Driver-Only'' Inspections and Driver Violations From ''Vehicle-Only'' Inspections

Currently, SMS includes Level 3 (Driver-Only) inspections in the Vehicle Maintenance BASIC only when vehicle violations are noted on the inspection report. Industry and enforcement personnel expressed concern that many vehicle violations fall outside the scope of the inspection and could bias the Vehicle Maintenance BASIC data. This bias is created by the fact that driver-only inspections count against the Vehicle BASIC assessments when vehicle violations are documented but do not count as a clean inspection toward the Vehicle BASIC when vehicle violations are not noted. Moreover, CVSA policy is that items not indicated in the inspection procedure for a particular level inspection, for example, a Level 3 (Driver-Only) inspection, should not be included on the inspection report.

FMCSA is therefore removing vehicle violations found during driver-only inspections and driver violations found during vehicle-only inspections to bring SMS into alignment with existing CVSA policies regarding protocol for different inspection levels.

FMCSA evaluated the extent to which inspectors are citing vehicle violations during driver-only inspections to confirm that this problem merits the attention that stakeholders have suggested. Approximately 139,000 violations, or 2.6 percent of all vehicle violations used in SMS, are vehicle violations cited during a driver-only inspection. While very few driver violations are ever documented in vehicle-only inspections, this change will also be made to ensure that only violations within the scope of a particular type of inspection are included in SMS.

When a vehicle violation is discovered during a Level 3 inspection, FMCSA strongly encourages the roadside inspector to convert the inspection to a Level 2 inspection where documentation of vehicle violations is appropriate. If the roadside inspector is not certified to conduct Level 2 inspections, the roadside inspector can still address the unsafe condition through State citations or warnings.

Identify Motor Carriers Transporting Passengers and Apply a More Stringent Passenger Carrier Intervention Threshold

Motor carriers subject to the passenger carrier intervention threshold in SMS are held to a significantly higher standard than non-passenger carriers. Enforcement stakeholders support updating the definition of passenger carrier within SMS to better focus FMCSA resources on carriers involved in passenger transportation.

FMCSA is revising the definition of carriers subject to the lower passenger carrier intervention thresholds within SMS. The new criteria add all for-hire carriers that operate 9–15 passenger capacity vehicles and private carriers that operate 16-plus passenger capacity vehicles, as these carriers are under FMCSA's authority. The new criteria exclude carriers that operate only 1–8 passenger capacity vehicles and private carriers that operate only 1–15 passenger capacity vehicles (effectively removing many carriers operating limousines, vans, taxis, etc.), as operation of these vehicles is generally outside most of FMCSA's regulations. The new criteria also remove carriers where less than 2% of their respective fleets are passenger vehicles, in order to exclude carriers that do not haul passengers as a significant part of their business. FMCSA determined how many carriers would be subject to the passenger carrier intervention threshold under these new criteria. This change would remove 4,200 carriers, while adding 5,700 carriers.

Eliminate the Use of the Terms ''Inconclusive'' and ''Insufficient Data'' and Distinguish Crash Data

Since April 2010, the BASIC summary on SMS online (*http://ai.fmcsa.dot.gov/sms*) has used the term ''inconclusive,'' to describe carriers that have enough inspections to be assessed but too few violations to warrant being considered for FMCSA interventions, and the term ''insufficient data'' to describe carriers that do not have enough inspections to produce a robust measure to even be assessed. Stakeholders have asked FMCSA to offer more specific fact-based descriptions, as the terms ''inconclusive'' and ''insufficient data'' are perceived to be difficult to understand.

FMCSA is providing a preview of the new terminology and the approach to presenting the crash data. The Agency encourages carriers to give feedback on the new terms before they are implemented publicly. For example, rather than displaying ''insufficient data,'' the site will display a fact-based description such as ''< than 5 inspections,'' and rather than displaying ''inconclusive,'' the site will contain a description such as ''no violations within 1 year.''

Also, in the ''Summary of Activities'' section of a motor carrier's information on SMS Online, FMCSA displays a count of recordable crashes broken into ''fatality/injury'' and ''tow- away.'' In response to stakeholder requests, FMCSA is separating the combined fatality/injury category into distinct categories: Fatality, injury, and tow-away crashes.

Implementation

As of the publication of this notice, motor carriers will be able to preview how these changes will affect their data and SMS results. During the SMS preview, motor carriers will have the opportunity to review the accuracy of SMS data, provide feedback, and if necessary, take action to improve their safety performance. During the March 2012 SMS Preview, motor carriers should:

- View their operational information to determine if they are now subject to placardable HM or passenger carrier intervention thresholds.
- View the new HM BASIC to review applicable violations.
- View the Vehicle Maintenance BASIC to determine how cargo/load securement violations previously

recorded in the Cargo-Related BASIC impact their Vehicle Maintenance percentiles, and to see which IEP-related violations have been recorded.

• Verify that vehicle violations found during driver-only inspections and driver violations found during vehicle-only inspections have been removed from their Vehicle Maintenance BASIC data.

• Review alternative terminology for ''insufficient data'' and ''inconclusive'' in the BASIC summary.

• View the ''Summary of Activities'' section of SMS Online to see the new breakout between injury crashes and fatal crashes.

FMCSA will collect, assess, and address feedback during the SMS Preview, and may further refine the enhancements prior to public implementation in July 2012.

Request for Comments

FMCSA requests comments on the above improvements to SMS. Commenters are requested to provide supporting data wherever appropriate.

Issued on: March 22, 2012.

William Bronrott,

Deputy Administrator.

[FR Doc. 2012–7360 Filed 3–26–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0043]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the diabetes mellitus requirement; request for comments.

SUMMARY: FMCSA announces receipt of applications from 16 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before April 26, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2012–0043 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., 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., Monday through Friday, except Federal holidays. The Federal Docket Management System (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: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf*.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

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.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 16 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Ross J. Brown

Mr. Brown, age 59, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brown understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a Commercial Motor Vehicle (CMV) safely. Mr. Brown meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A Commercial Driver's License (CDL) from Michigan.

Bert R. Duncan, II

Mr. Duncan, 49, has had ITDM since 2004. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Duncan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Duncan meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have

diabetic retinopathy. He holds a Class A CDL from Utah.

John L. Frank

Mr. Frank, 64, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Frank understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Frank meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Idaho.

DeVere E. Hansen

Mr. Hansen, 58, has had ITDM since 1998. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hansen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hansen meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Utah.

Grant C. Huftalin

Mr. Huftalin, 43, has had ITDM since 2010. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Huftalin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Huftalin meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Iowa.

Steven M. Janczak

Mr. Janczak, 21, has had ITDM since 1993. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Janczak understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Janczak meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Wisconsin.

Aaron L. Kreiser

Mr. Kreiser, 38, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kreiser understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kreiser meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Maryland.

Mark S. Madsen

Mr. Madsen, 58, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Madsen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Madsen meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds an operator's license from Nebraska.

James W. McClintock, III

Mr. McClintock, 52, has had ITDM since 1997. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. McClintock understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McClintock meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Arkansas.

John W. Morrison

Mr. Morrison, 54, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Morrison understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Morrison meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from California.

Bruce V. Oppegard

Mr. Oppegard, 41, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Oppegard understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Oppegard meets the vision requirements

of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Minnesota.

Edward L. Quinones

Mr. Quinones, 52, has had ITDM since 2011. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Quinones understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Quinones meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

David L. Rice

Mr. Rice, 46, has had ITDM since 1994. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rice understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rice meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Maine.

Wade D. Street

Mr. Street, 52, has had ITDM since 1968. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Street understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Street meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Montana.

Charles M. Sweat

Mr. Sweat, 59, has had ITDM since 2010. His endocrinologist examined him in 2011 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sweat understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sweat meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

Donald E. Towne

Mr. Towne, 58, has had ITDM since 2003. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Towne understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Towne meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2011 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Connecticut.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441) [1]. The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 USC. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: March 21, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–7363 Filed 3–26–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Research & Innovative Technology Administration

[Docket ID Number RITA 2008–0002]

Agency Information Collection; Activity Under OMB Review; Report of Financial and Operating Statistics for Large Certificated Air Carriers

AGENCY: Research & Innovative Technology Administration (RITA),

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for reinstatement of an expired approved collection. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 27, 2011 (76 FR 4992). The Bureau of Economic Analysis at the Department of Commerce submitted comments in support of the continuation of the data collection.

DATES: Written comments should be submitted by April 26, 2012.

FOR FURTHER INFORMATION CONTACT: Jeff Gorham, Office of Airline Information, RTS–42, Room E34–414, RITA, BTS, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, Telephone Number (202) 366–4406, Fax Number (202) 366–3383 or email *jeff.gorham@dot.gov.*

Comments: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street NW., Washington, DC 20503, Attention: RITA/BTS Desk Officer.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0013

Title: Report of Financial and Operating Statistics for Large Certificated Air Carriers.

Form No.: BTS Form 41.

Type Of Review: Reinstatement of an expired approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 76.

Estimated Time per Response: 4 hours per schedule, an average carrier may submit 90 schedules in one year.

Total Annual Burden: 27,360 hours.

Needs and Uses: Program uses for Form 41 data are as follows:

Mail Rates

The Department of Transportation sets and updates mainline Alaska mail rates based on carrier aircraft operating expense, traffic and operational data. Form 41 cost data, especially fuel costs, terminal expenses, and line haul expenses are used in arriving at rate levels. DOT revises the established rates based on the percentage of unit cost changes in the carriers' operations. These updating procedures have resulted in the carriers receiving rates of compensation that more closely parallel their costs of providing mail service and contribute to the carriers' ability to continue providing service.

Submission of U.S. Carrier Data to ICAO

As a party to the Convention on International Civil Aviation, the United States is obligated to provide the International Civil Aviation Organization with financial and statistical data on operations of U.S. air carriers. Over 99 percent of the data filed with ICAO is extracted from the carriers' Form 41 reports.

Carrier Fitness

Fitness determinations are made for both new entrants and established U.S. carriers proposing a substantial change in operations. A portion of these applications consists of an operating plan for the first year (14 CFR part 204) and an associated projection of revenues and expenses. The carrier's operating costs, included in these projections, are compared against the cost data in Form 41 for a carrier or carriers with the same aircraft type and similar operating characteristics. Such a review validates the reasonableness of the carrier's operating plan.

Form 41 reports, particularly balance sheet reports and cash flow statements, play a major role in the identification of vulnerable carriers. Data comparisons are made between current and past periods in order to assess the current financial position of the carrier. Financial trend lines are extended into the future to analyze the continued viability of the carrier. DOT reviews three areas of a carrier's operation: (1) The qualifications of its management team, (2) its disposition to comply with laws and regulations, and (3) its financial posture. DOT must determine whether or not a carrier has sufficient financial resources to conduct its operations without imposing undue risk on the traveling public. Moreover, once a carrier is operating, DOT is required to monitor its continuing fitness.

Senior DOT officials must be kept fully informed as to all current and developing economic issues affecting the airline industry. In preparing financial conditions reports or status reports on a particular airline, financial and traffic data are analyzed. Briefing papers may use the same information.

Pending Rulemaking

On July 15, 2011, the Department published a Notice of Proposed Rulemaking (NPRM) proposing to collect certain Form 41 revenue information on airline-imposed fees in a more detailed manner (see 76 FR 41726). Many air carriers have adopted *a la carte* pricing with separate fees for certain optional services that use to be included in the ticket price. Carriers currently report excess baggage fees, reservation cancellation fees and miscellaneous operating revenues. The proposed rule would require carriers to report, (1) itinerary related fees, (2) seating assignment fees, (3) baggage fees broken down between first and second checked bags, carry-on bags and other bags, (4) unaccompanied minor/passenger assistance fees, and (5) other fees. The Department wants to make airline pricing more transparent to consumers and airline analysts.

Administrative Issues

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note) requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC on March 20, 2012.

Patricia Hu,

Director, Bureau of Transportation Statistics, Research and Innovative Technology Administration.

[FR Doc. 2012–7300 Filed 3–26–12; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Research & Innovative Technology Administration

[Docket ID Number RITA 2008–0002]

Agency Information Collection; Activity Under OMB Review; Report of Passengers Denied Confirmed Space—BTS Form 251

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of

Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of BTS collecting reports on the number of passengers holding confirmed reservations that voluntarily or involuntarily give up their seats when the airline oversells the flight. Comments are requested concerning whether (a) the collection is still needed by the Department of Transportation, (b) BTS accurately estimated the reporting burden; (c) there are other ways to enhance the quality, utility and clarity of the information collected; and (d) there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted by May 29, 2012.

FOR FURTHER INFORMATION CONTACT: Cecelia Robinson, Office of Airline Information, RTS–42, Room E34, RITA, BTS, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, Telephone Number (202) 366–4405, Fax Number (202) 366–3383 or email *cecelia.robinson@dot.gov*.

Comments: Comments should identify the associated OMB approval # 2138–0018 and Docket ID Number RITA 2008–0002. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138–0018, Docket–RITA 2008–0002. The postcard will be date/time stamped and returned.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0018

Title: Report of Passengers Denied Confirmed Space.

Form No.: BTS Form 251.

Type of Review: Reinstatement of an expired approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 14.

Number of Responses: 56.

Total Annual Burden: 560 hours.

Needs and Uses: BTS Form 251 is a one-page report submitted four times per year, on the number of passengers denied seats either voluntarily or involuntarily, whether these bumped passengers were provided alternate transportation and/or compensation, and the amount of the payment. U.S. air carriers that account for at least 1 percent of domestic scheduled-service passenger revenues must report oversales on all operations with 30 seats or larger aircraft that depart a U.S. airport.

Carriers do not report data from inbound international flights to the United States because the protections of 14 CFR Part 250 *Oversales* do not apply to these flights. The report allows the Department to monitor the effectiveness of its oversales rule and take enforcement action when necessary. The involuntarily denied-boarding rate has decreased from 4.38 per 10,000 passengers in 1980 to 0.71 for the quarter ended December 2011. Without Form 251, determining the effectiveness of the Department's oversales rule would be impossible. The publishing of the carriers' individual denied boarding rates has diminished the need for more intrusive regulation. The rate of denied boarding can be examined as a continuing fitness factor. This rate provides an insight into a carrier's customer service practices. A rapid sustained increase in the rate of denied boarding may indicate operational difficulties. Because the rate of denied boarding is released quarterly, travelers and travel agents can select carriers with lower incidences of bumping passengers. This information is available in the *Air Travel Consumer Report* at: *http://airconsumer.ost.dot.gov/reports/index.htm*. The *Air Travel Consumer Report* is also sent to newspapers, magazines, and trade journals. The public availability of this information deters carriers from setting unreasonable overbooking rates—a market-based mechanism that is more efficient than direct regulation of those rates.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note) requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC on March 20, 2012.

Patricia Hu,

Director, Bureau of Transportation Statistics, Research and Innovative Technology Administration.

[FR Doc. 2012–7303 Filed 3–26–12; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Research & Innovative Technology Administration

[Docket ID No. RITA 2008–0002]

Agency Information Collection; Activity Under OMB Review; Airline Service Quality Performance

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Bureau of Transportation Statistics invites the general public, industry and other governmental parties to comment on the continuing need for and usefulness of DOT requiring large certificated air carriers to file ''On-Time Flight Performance Reports'' and ''Mishandled-Baggage Reports'' pursuant to 14 CFR 234.4 and 234.6. These reports are used to monitor the quality of air service that larger air carriers are providing the flying public. The Federal Aviation Administration uses the On-Time Flight Performance Reports to identify problem areas within the air traffic control system.

DATES: Written comments should be submitted by May 29, 2012.

FOR FURTHER INFORMATION CONTACT: Cecelia Robinson, Office of Airline Information, RTS–42, Room E34, RITA, BTS, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, Telephone Number (202) 366–4405, Fax Number (202) 366–3383 or email *cecelia.robinson@dot.gov.*

Comments: Comments should identify the associated OMB approval #2138–0041 and Docket ID Number RITA 2008–0002. Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on OMB # 2138–0041, Docket—RITA 2008–0002. The postcard will be date/time stamped and returned.

SUPPLEMENTARY INFORMATION:

OMB Approval No. 2138–0041.

Title: Airline Service Quality Performance Reports—Part 234.

Form No.: BTS Form 234.

Type of Review: Reinstatement of an expired approved collection.

Respondents: Large certificated air carriers that account for at least 1 percent of the domestic scheduled-service passenger revenues.

Number of Respondents: 14.
Number of Responses: 168.
Total Burden per Response: 20 hours.
Total Annual Burden: 3,360 hours.
Needs and Uses:

Consumer Information

Part 234 gives air travelers information concerning the on-time performance history of flights that they are considering booking and the rate of mishandled baggage for each reporting carrier. The reports are filed by the 14 largest scheduled-service U.S. passenger carriers.

On July 15, 2011 the Department published a Notice of Proposed Rulemaking (NPRM) proposing to change the manner in which baggage data are reported (see 76 FR 41726). The proposed rule would require carriers to report, (1) the number of mishandled checked bags (as opposed to the current requirement to report the number of mishandled baggage reports filed by passengers), (2) the total number of checked bags (as opposed to the current requirement to report the total number of enplaned passengers), (3) the number of mishandled wheelchairs and scooters used by passengers with disabilities that were carried in the cargo compartment, and (4) the total number of wheelchairs and scooters used by passengers with disabilities that were carried in the cargo compartment. In the preamble to that notice the Department stated that the change in the matrix to mishandled bags per unit of checked bags would give consumers more reliable information on the air carriers' performance regarding the treatment of baggage within their control. Under the current system, there is no direct relationship between the number of mishandled bags and the number of checked bags. With the institution of baggage fees, the number of checked bags at some carriers has declined by 40 to 50 percent. There has been a corresponding 40 percent decline (i.e. improvement) in the industry mishandled baggage rates. A large part of the improvement in the mishandled baggage rate appears to be related to the decrease in checked baggage, although the current matrix hides this fact. The proposed matrix would have a direct correlation between mishandled baggage and checked baggage.

Separate breakout of mishandled wheelchairs/scooters would assist passengers with mobility disabilities in selecting air carriers with high probabilities in meeting their special needs. There is a gap in the Department's data regarding the mishandling of wheelchairs and scooters. The proposed data will provide information to passenger with disabilities on which air carriers best meet their special needs. Thus, this pending rulemaking may impact this information collection.

Reducing and Identifying Traffic Delays

The Federal Aviation Administration uses Part 234 data to pinpoint and analyze air traffic delays. Wheels-up and wheels-down times are used in conjunction with departure and arrival times to show the extent of ground delays. Actual elapsed flight time, wheels-down minus wheels-up time, is compared to scheduled elapsed flight time to identify airborne delays. The reporting of aircraft tail number allows the FAA to track an aircraft through the air network, which enables the FAA to study the ripple effects of delays at hub airports. The data can be analyzed for airport design changes, new equipment purchases, the planning of new runways or airports based on current and projected airport delays, and traffic levels. The identification of the reason for delays allows the FAA, airport operators, and air carriers to pinpoint delays under their control.

Administrative Issues

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501) requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

Issued in Washington, DC on March 20, 2012.

Patricia Hu

Director, Bureau of Transportation Statistics, Research and Innovative Technology Administration.

[FR Doc. 2012–7298 Filed 3–26–12; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF THE TREASURY

United States Mint

Update to the January 6, 2012, Federal Register Notice on Prices for 2012 Products Featuring $1 Coins

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: On January 6, 2012, the United States Mint announced 2012 prices for nine products featuring $1 coins, including a $1 Coin Five-Coin Set, priced at $12.95. This notice is to announce that a Presidential $1 Four-Coin Set, priced at $9.95, will be offered instead of the $1 Coin Five-Coin Set. All of the other $1 coin products and their prices announced on January 6, 2012, will remain as United States Mint offerings. The complete $1 coin product list with prices is as follows:

Product	Retail price
Presidential $1 Four-Coin Set	$9.95
Presidential $1 Coin & First Spouse Medal Set™	9.95
Presidential $1 Coin Uncirculated Set™ (P&D)	16.95
Presidential $1 Coin Proof Set™	18.95
American Presidency $1 Coin Cover Series	19.95
Native American and Presidential $1 Coin Rolls	32.95
$1 Coin 100-Coin Bags	111.95
$1 Coin 250-Coin Box	275.95
$1 Coin 500-Coin Box	550.95

FOR FURTHER INFORMATION CONTACT: B. B. Craig, Associate Director for Sales and Marketing, United States Mint, 801 9th Street NW., Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112, and 9701.

Dated: March 21, 2012.

Richard A. Peterson,

Deputy Director, United States Mint.

[FR Doc. 2012–7258 Filed 3–26–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Gulf War Veterans' Illnesses Task Force Report

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Secretary Department of Veterans Affairs (VA) established the Gulf War Veterans' Illnesses Task Force (GWVI–TF) in August 2009 to conduct a comprehensive review of VA policies and programs addressing 1990–1991 Gulf War Veterans' illnesses. The GWVI–TF published its first annual report in September 2010.

The GWVI–TF posted a draft of its 2011 annual report for public comment on October 20, 2011. VA published the report in the **Federal Register** (76 FR 65321) and posted it on a social media Web site created specifically to elicit

responses on the report. VA collected comments through both venues. During the thirty day comment period, VA received twenty-five comments submitted through the **Federal Register** venue and over 450 comments from over 500 registered users through the social media Web site. VA sincerely thanks all those who took the time to submit comments.

VA has completed its 2011 Gulf War Veterans' Illnesses Task Force Report. The GWVI–TF reviewed all the comments submitted and addressed in this report those comments that were directly responsive to the report. Comments specifically addressed in this report are annotated accordingly. The comments that were not directly responsive to the report will serve as guidance for the GWVI–TF to consider as it moves forward.

Finally, there were a number of individual requests for assistance. Those that contained sufficient specific information were referred to appropriate VA offices for action. Those that were not specific enough or were anonymously submitted will serve as background for consideration on areas for the GWVI–TF to study in the future.

ADDRESSES: The 2011 Gulf War Veterans' Illnesses Task Force Report is available on the VA Web site at: *http://www.va.gov/opa/publications/2011_GWVI-TF_Report.pdf.*

FOR FURTHER INFORMATION CONTACT: John Kent, GWVI–TF Secretary, OSVA, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, at (202) 461–4814.

Approved: March 22, 2012.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2012–7355 Filed 3–26–12; 8:45 am]

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Part II

Department of Health and Human Services

45 CFR Parts 155, 156, and 157

Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers; Final Rule and Interim Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 155, 156, and 157

[CMS–9989–F]

RIN 0938–AQ67

Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers

AGENCY: Department of Health and Human Services.

ACTION: Final rule, Interim final rule.

SUMMARY: This final rule will implement the new Affordable Insurance Exchanges (''Exchanges''), consistent with title I of the Patient Protection and Affordable Care Act of 2010 as amended by the Health Care and Education Reconciliation Act of 2010, referred to collectively as the Affordable Care Act. The Exchanges will provide competitive marketplaces for individuals and small employers to directly compare available private health insurance options on the basis of price, quality, and other factors. The Exchanges, which will become operational by January 1, 2014, will help enhance competition in the health insurance market, improve choice of affordable health insurance, and give small businesses the same purchasing clout as large businesses.

DATES: *Effective Date:* These regulations are effective on May 29, 2012.

Comment Date: Certain provisions of this final rule are being issued as interim final. We will consider comments from the public on the following provisions: §§ 155.220(a)(3); 155.300(b); 155.302; 155.305(g); 155.310(e); 155.315(g); 155.340(d); 155.345(a); and, 155.345(g). To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. Eastern Standard Time (EST) on May 11, 2012.

ADDRESSES: In commenting, please refer to file code CMS–9989–F. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9989–F, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9989–F, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses: a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

FOR FURTHER INFORMATION CONTACT:

Alissa DeBoy at (301) 492–4428 for general information and matters related to part 155.

Michelle Strollo at (301) 492–4429 for matters related to part 155 subparts D and E.

Pete Nakahata at (202) 680–9049 for matters related to part 156.

Rex Cowdry at (301) 492–4387 for matters related to part 155 subpart H and part 157.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will be also available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

This final rule incorporates provisions originally published as two proposed rules, the July 15, 2011 rule titled Establishment of Exchanges and Qualified Health Plans (''Exchange establishment proposed rule''), and the August 17, 2011 rule titled Exchange Functions in the Individual Market: Eligibility Determinations and Exchange Standards for Employers (''Exchange eligibility proposed rule''). These proposed rules are referred to collectively as the Exchange establishment and eligibility proposed rules. While originally published as separate rulemaking, the provisions contained in these proposed rules are integrally linked, and together encompass the key functions of Exchanges related to eligibility, enrollment, and plan participation and management. In addition, several sections in this final rule are being issued as interim final rules and we are soliciting comment on those sections. Given the highly connected nature of these provisions, we are combining both proposed rules and the interim final rule into a single final rule for reader ease and consistency with the note that, even though the final rule is shorter than the sum of the two proposed rules, it is longer than each individually.

An updated Regulatory Impact Analysis associated with this final rule is available at *http://cciio.cms.gov* under ''Regulations and Guidance.'' A summary of the aforementioned analysis is included as part of this final rule.

Abbreviations

Affordable Care Act—The Affordable Care Act of 2010 (which is the collective term for the Patient Protection and Affordable Care Act (Pub. L. 111–148) and the Health Care and Education Reconciliation Act (Pub. L. 111–152))

BHP Basic Health Program
CAHPS Consumer Assessment of Healthcare Providers and Systems
CHIP Children's Health Insurance Program
CMS Centers for Medicare & Medicaid Services

DOL U.S. Department of Labor
ERISA Employee Retirement Income Security Act (29 U.S.C. section 1001, *et seq.*)
FEHBP Federal Employees Health Benefits Program (5 U.S.C. 8901, *et seq.*)
HEDIS Healthcare Effectiveness Data and Information Set
HHS U.S. Department of Health and Human Services
HIPAA Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191)
HMO Health Maintenance Organization
IHS Indian Health Service
IRS Internal Revenue Service
LEP Limited English Proficient
MAGI Modified Adjusted Gross Income
MEWA Multiple Employer Welfare Arrangement
NAIC National Association of Insurance Commissioners
OMB Office of Management and Budget
OPM U.S. Office of Personnel Management
PBM Pharmacy Benefit Manager
PHS Act Public Health Service Act
PRA Paperwork Reduction Act of 1985
QHP Qualified Health Plan
SHOP Small Business Health Options Program
SSA Social Security Administration
SSN Social Security Number
The Act Social Security Act
The Code Internal Revenue Code of 1986
TIN Taxpayer Identification Number

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Executive Summary: Beginning in 2014, individuals and small businesses will be able to purchase private health insurance through competitive marketplaces called Affordable Insurance Exchanges, or ''Exchanges.'' Exchanges will offer Americans competition, choice, and clout. Insurance companies will compete for business on a level playing field, driving down costs. Consumers will have a choice of health plans to fit their needs, and Exchanges will give individuals and small businesses the same purchasing clout as big businesses.

This final rule: (1) Sets forth the minimum Federal standards that States must meet if they elect to establish and operate an Exchange, including the standards related to individual and employer eligibility for and enrollment in the Exchange and insurance affordability programs; (2) outlines minimum standards that health insurance issuers must meet to participate in an Exchange and offer qualified health plans (QHPs); and (3) provides basic standards that employers must meet to participate in the Small Business Health Options Program (SHOP). The intent of this final rule is to afford States substantial discretion in the design and operation of an Exchange, with greater standardization provided where directed by the statute or where there are compelling practical, efficiency or consumer protection reasons. Consistent with the scope of the Exchange establishment and eligibility proposed rules, this final rule does not address all of the Exchange provisions in the Affordable Care Act; rather, more details will be provided in forthcoming guidance and future rulemaking, where appropriate.

A portion of this rule is issued on an interim final basis. As such, we will consider comments from the public on the following provisions:

- § 155.220(a)(3)—Related to the ability of a State to permit agents and brokers to assist qualified individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs.
- § 155.300(b)—Related to Medicaid and CHIP regulations;
- § 155.302—Related to options for conducting eligibility determinations;
- § 155.305(g)—Related to eligibility standards for cost-sharing reductions;
- § 155.310(e)—Related to timeliness standards for Exchange eligibility determinations;
- § 155.315(g)—Related to verification for applicants with special circumstances;
- § 155.340(d)—Related to timeliness standards for the transmission of information for the administration of advance payments of the premium tax credit and cost-sharing reductions; and
- § 155.345(a) and § 155.345(g)—Related to agreements between agencies administering insurance affordability programs.

I. Background

A. Legislative Overview

1. Legislative Requirements for Establishing Exchanges

Section 1311(b) and section 1321(b) of the Affordable Care Act provide that each State has the opportunity to establish an Exchange(s) that: (1) Facilitates the purchase of insurance coverage by qualified individuals through qualified health plans (QHPs); (2) assists qualified employers in the enrollment of their employees in QHPs; and (3) meets other standards specified in the Affordable Care Act.

Section 1321 of the Affordable Care Act discusses State flexibility in the operation and enforcement of Exchanges and related policies. Section 1311(k) specifies that Exchanges may not establish rules that conflict with or prevent the application of regulations promulgated by the Secretary. Section 1311(d) describes the minimum functions of an Exchange, including the certification of QHPs.

Section 1321(c)(1) directs the Secretary to establish and operate such Exchange within States that either: (1) Do not elect to establish an Exchange, or (2) as determined by the Secretary on or before January 1, 2013, will not have an Exchange operable by January 1, 2014. Section 1321(a) also provides broad authority for the Secretary to establish standards and regulations to implement the statutory standards related to Exchanges, QHPs, and other components of title I of the Affordable Care Act.

Section 1401 of the Affordable Care Act creates new section 36B of the Internal Revenue Code (the Code), which provides for a premium tax credit for eligible individuals who enroll in a QHP through an Exchange. Section 1402 establishes provisions to reduce the cost-sharing obligation of certain

eligible individuals enrolled in a QHP offered through an Exchange, including standards for determining Indians eligible for certain categories of cost-sharing reductions.

Under section 1411 of the Affordable Care Act, the Secretary is directed to establish a program for determining whether an individual meets the eligibility standards for Exchange participation, advance payments of the premium tax credit, cost-sharing reductions, and exemptions from the individual responsibility provision.

Sections 1412 and 1413 of the Affordable Care Act and section 1943 of the Social Security Act (the Act), as added by section 2201 of the Affordable Care Act, contain additional provisions regarding eligibility for advance payments of the premium tax credit and cost-sharing reductions, as well as provisions regarding simplification and coordination of eligibility determinations and enrollment with other health programs.

Unless otherwise specified, the provisions in this final rule related to the establishment of minimum functions of an Exchange are based on the general authority of the Secretary under section 1321(a)(1) of the Affordable Care Act.

2. Legislative Requirements for Related Provisions

Subtitle K of title II of the Affordable Care Act, Protections for American Indians and Alaska Natives, section 2901, extends special benefits and protections to Indians including limits on cost sharing and payer of last resort requirements for health programs operated by the Indian Health Service (IHS), Indian tribes, tribal organizations, and urban Indian organizations. We are finalizing special Exchange enrollment periods and the reductions in cost sharing for Indians authorized, respectively, by sections 1311(c)(6) and 1402(d) of the Affordable Care Act under this authority in subparts D and E of part 155, and we expect to address others in future rulemaking.

Section 6005 of the Affordable Care Act creates new section 1150A of the Act, which directs QHP issuers, and sponsors of certain plans offered under part D of title XVIII of the Act to provide data on the cost and distribution of prescription drugs covered by the plan. We are codifying these standards under this authority in subpart C of part 156.

B. Structure of the Final Rule

The regulations outlined in this final rule are codified in the new 45 CFR parts 155, 156, and 157. Part 155 outlines the standards relative to the establishment, operation, and minimum functionality of Exchanges, including eligibility standards for insurance affordability programs. Part 156 outlines the standards for health insurance issuers with respect to participation in an Exchange, including the minimum certification standards for QHPs. Many provisions in part 155 have parallel provisions under part 156 because the Affordable Care Act creates complementary responsibilities for Exchanges and QHP issuers. Where possible, there are cross-references between parts 155 and 156 to avoid redundancy. Part 157 establishes the participation standards for employers in the Small Business Health Options Program (SHOP).

Subjects included in the Affordable Care Act to be addressed in separate rulemaking include but are not limited to: (1) Standards outlining the Exchange process for issuing certificates of exemption from the individual responsibility policy and payment under section 1411(a)(4); (2) defining essential health benefits, actuarial value and other benefit design standards; and (3) standards for Exchanges and QHP issuers related to quality.

We note that the health plan standards set forth under this final rule are, for the most part, strictly related to QHPs certified to be offered through the Exchange and not the entire individual and small group market. Such policies for the entire individual and small and large group markets have been, and will continue to be, addressed in separate rulemaking issued by HHS, and the Departments of Labor and the Treasury.

C. Alignment With Related Rules and Published Information

The Exchange eligibility proposed rule was published in conjunction with ''Medicaid Program; Eligibility Changes under the Affordable Care Act of 2010—CMS–2349–P,'' which will be referred to throughout this final rule as the ''Medicaid proposed rule'' and the proposed rule published by the Department of the Treasury, ''Health Insurance Premium Tax Credits—REG 131491–10,'' which will be referred to throughout this final rule as the ''Treasury proposed rule''. This regulation includes numerous cross-references to the Medicaid final rule, which is expected to be finalized shortly after this final rule. The Treasury final rule is expected to be published soon after this Exchanges final rule.

HHS published a document titled ''State Exchange Implementation Question and Answers'' on November 29, 2011.[1] We reference this document throughout the preamble where the information complements policies in this final rule.

II. Provisions of the Proposed Regulation and Analysis and Responses to Public Comments

The Exchange establishment and eligibility proposed rules were published in the **Federal Register** on July 15, 2011 and August 17, 2011, respectively, with comment periods ending October 31, 2011. In total, we received approximately 24,781 comments on both proposed rules. Of the comments received, about 23,000 were a collection of letter campaigns related to women's services, or general public comments on the Affordable Care Act and the government's role in healthcare, but not specific to the proposed rules. We also received a number of comments on essential health benefits and preventive services. We have not addressed such comments, and others that are not directly related to the proposed rule, because they are outside the scope of this final rule.

Before the proposed rules, HHS also published a Request for Comment (the RFC) on August 3, 2010 (75 FR 45584) inviting the public to provide input regarding the rules that will govern the Exchanges. In this final rule, we have responded to comments submitted in response to the Exchange establishment and eligibility proposed rules and the RFC, where relevant. These comments are not separately identified, but instead are incorporated into each substantive section of the final rule as appropriate. For the most part, we address issues according to the numerical order of the regulation sections.

Comments represented a wide variety of stakeholders, including but not limited to States, tribes, tribal organizations, health plans, consumer groups, healthcare providers, industry experts, and members of the public. In addition, we held consultation sessions on August 22, 2011, September 7, 2011, and September 15, 2011 to provide an overview of the proposed rule where Tribal governments were afforded an opportunity to ask questions and make comments. The public was reminded to submit written comments before the close of the public comment period that was announced in the proposed rule and we extended the comment period by 30 days to ensure ample opportunity for comments.

[1] State Exchange Implementation Questions and Answers, published November 29, 2011: *http://cciio.cms.gov/resources/files/Files2/11282011/exchange_q_and_a.pdf.pdf.*

Many commenters addressed the balance between flexibility for States and Exchanges and standardization and predictability for consumers nationwide. Commenters also expressed concerns about differences between Exchange and Medicaid policies and about various aspects of the eligibility verification and redetermination process.

While we recognize that consumers may benefit from national standards, we continue to believe that States are best equipped to adapt the minimum Exchange functions to their local markets and the unique needs of their residents. Further, States already have significant experience performing many key functions, including oversight and enforcement of health plans, and determining eligibility for health benefit programs. Therefore, where possible we finalized provisions of the proposed rule that provided significant discretion for States to go beyond the minimum standards in implementing and designing an Exchange. We believe this approach leverages local expertise and experience to provide a positive experience for consumers. Since functions within an Exchange will be handled consistently, consumers comparing plans within an Exchange will benefit from standardization. In addition, based on comments received, we provide States with additional options for determining eligibility under a State-based and Federally-facilitated Exchange in this final rule.

A. Part 155—Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act

1. Subpart A—General Provisions

a. Basis and Scope (§ 155.10)

Proposed § 155.10 of subpart A specified the general statutory authority for and scope of standards proposed in part 155, which establish minimum standards for the State option to establish an Exchange; minimum Exchange functions; eligibility and enrollment of qualified individuals, including for advance payments of the premium tax credit and cost-sharing reductions; enrollment periods; minimum SHOP functions; eligibility and enrollment of qualified employers and employees in a SHOP; and certification of QHPs. We did not receive specific comments on this section and are finalizing the provision as proposed.

b. Definitions (§ 155.20)

Under § 155.20, we set forth definitions for terms that are used throughout part 155. For the most part, the definitions presented in § 155.20 were taken directly from the Affordable Care Act or from existing regulations, though some new definitions were created when necessary.

We proposed definitions or interpretations for ''Exchange,'' ''advance payments of the premium tax credit,'' ''annual open enrollment period,'' ''applicant,'' ''cost-sharing reductions,'' ''initial enrollment period,'' and ''special enrollment period.'' In addition, in the Exchange Eligibility proposed rule, we included a definition for ''application filer.''

Comment: A few commenters suggested that the term ''applicant'' only apply to individuals seeking coverage for themselves. Another commenter sought clarification as to whether the term applies only to modified adjusted gross income (MAGI)–based Medicaid applicants or to all Medicaid applicants.

Response: We have revised the definition of the term ''applicant'' to apply only to individuals who are seeking eligibility for coverage for themselves or their family. The proposed definition included an individual who is seeking eligibility for advance payments of the premium tax credit and cost-sharing reductions who might not be seeking coverage for himself or herself (for example, in a situation in which a parent is seeking coverage only for his or her children); we have removed these programs from the definition of applicant as part of this clarification. Revising this definition is important to clarify that certain provisions of subpart D (for example, verification of citizenship and lawful presence) only apply to individuals who are seeking coverage.

We also note that this term applies regardless of the results of an individual's eligibility determination. Consequently, if an individual is seeking coverage and he or she is ultimately determined eligible for Medicaid in a non-MAGI category, he or she was still an ''applicant.'' We further clarify that the term ''applicant'' applies regardless of whether an application was submitted directly to the Exchange, or if an application was submitted to an agency administering an insurance affordability program (for example, the State Medicaid or CHIP agency) and then transmitted to the Exchange.

Comment: We received comments suggesting that the definition of ''application filer,'' described in § 155.300(a), incorporate language included in Medicaid proposed regulations at 42 CFR 435.907, allowing that applications be completed by ''the applicant, an authorized representative, or someone acting responsibly for the applicant.''

Response: In the final rule, we amend the definition of ''application filer'' in proposed § 155.300 to align with the description of individuals who may submit an application according to § 155.405(c) of this final rule as well as the Medicaid final rule, and to include: applicants; an adult who is in the applicant's household, as defined in 42 CFR 435.603(f), or family, as defined in section 36B(d)(1) of the Code; authorized representatives; or, if the applicant is a minor or incapacitated, someone acting responsibly on behalf of the applicant.

Comment: A few commenters suggested that defining ''benefit year'' as a calendar year may be confusing to some industries where such term is not used in the same way. Others asked how this definition impacts the calculation of deductibles and out-of-pocket limits.

Response: The term ''benefit year'' is defined only for the purposes of this regulation and does not change the industry's use of the term. In this final rule, as in the proposed rule, we use ''benefit year'' to refer to the calendar year of coverage provided through the Exchange. The calculation of deductibles and cost-sharing limits described in section 1302(c) of the Affordable Care Act will be addressed in future regulations.

Comment: One commenter recommended we should define ''consumer'' to include enrollees, qualified employers, qualified individuals and qualified employers. One commenter requested that ''person'' be more clearly defined to be limited to individuals acting as brokers or agents, because in some States the word ''person'' is defined to include entities such as a company, insurer, association, or an organization.

Response: In response to the comments, we have tried to limit the use of the terms ''consumer'' and ''person'' to reduce ambiguity and any confusion. When possible, we say ''individual'' when the terms ''applicant, qualified individual, or enrollee'' are not suitable. The definition of agent or broker is inclusive of individuals, companies, insurers, associations, organizations, and any other entity that holds a license as an agent, broker, or insurance producer. This final rule does not define ''person.''

Comment: Some commenters suggested that we codify the definition of ''educated health care consumer in section 1304(e) of the Affordable Care Act.

Response: We have added this definition to § 155.20.

Comment: Two commenters sought clarification on whether the term ''Exchange'' includes both the individual market and SHOP components of an Exchange.

Response: The definition of ''Exchange'' includes the phrase ''makes QHPs available to qualified individuals and qualified employers'' and thus incorporates the Exchange functions that serve both the individual and small group markets. Governance of an independent SHOP is addressed in § 155.110(e) and unique standards for the SHOP are outlined in subpart H of this final rule.

Comment: One commenter suggested that we define what it means for an Exchange to ''make available'' QHPs.

Response: We believe that this regulation in its entirety defines what it means to ''make available'' QHPs in terms of certifying QHPs, displaying comparative QHP information, determining eligibility for enrollment, facilitating enrollment, and providing consumer assistance.

Comment: One commenter requested that we define the term ''entities eligible to carry out Exchange functions.''

Response: We define what entities are eligible to carry out Exchange functions in § 155.110(a) of this final rule, and believe that a definition in § 155.20 would be duplicative.

Comment: Several commenters recommended that the final rule include a definition of ''family'' and that it be based on definitions used by Office of Personnel Management or the Department of Labor, or as defined under the Family and Medical Leave Act. Commenters urged the definition to capture the diversity and variety of family structures. Several commenters noted that a definition will promote clarity and consistency in the implementation of proposed § 156.255.

Response: For purposes of the administration of advance payments of the premium tax credit and cost-sharing reductions, this final rule cross-references and incorporates from section 36B of the Code the definition of ''household income.'' That definition relies on an identification of members of the ''family'' that is based on section 36B of the Code, which will be finalized as part of the Treasury rule. We intend this final rule to align with the Code as implemented by the Secretary of the Treasury's final rules. This final rule, at § 155.320(c)(2)(i), provides that an application filer must provide an attestation to the Exchange regarding the individuals that comprise his or her household for purposes of Medicaid and CHIP eligibility (within the meaning of 42 CFR 435.603(f)). Please refer to part 155 subpart D for a more detailed discussion of this topic. We note that we are not finalizing the provisions of § 156.255(c).

Comment: Several commenters stated that the definition of ''qualified employer'' should include a multi-employer plan as defined in ERISA Section 3(37), and that ''qualified employee'' should include individuals who are participants in a multi-employer plan, not just individuals who are employed by a qualified employer.

Response: We do not think that the law supports accepting the commenters' suggested changes in the definitions of ''qualified employer'' and ''qualified employee.'' Accordingly, we have not changed the definitions in the final rule. We intend to address commenters' concerns surround multi-employer and church plans in future guidance.

Comment: We received numerous comments regarding the types of plans that should be considered health plans eligible for certification as QHPs. A few commenters suggested that multiple employer welfare arrangements (MEWAs) be allowed to offer plans through the Exchange, be allowed to offer plans only in the SHOP and not the individual market, and be allowed to restrict enrollment to specific industry members or associations. A small number of commenters also suggested that Taft-Hartley plans and church plans be available through the Exchange. Other commenters urged HHS to ensure that all QHPs offered through the Exchange meet the same standards to ensure a level playing field and questioned the ability of self-insured employer groups to comply.

Response: We finalize the definition of a health plan as codified from section 1301(b)(1) of the Affordable Care Act, and the standards set forth for participation in an Exchange are equally applicable to any health insurance issuer seeking certification of health plans as QHPs. We intend to address issues related to multi-employer and church plans in future guidance.

Comment: Many commenters recommended HHS adopt an expansive definition of ''lawfully present'' that includes all prospective qualified individuals. A few commenters suggested that our definition be based on the current definition in section 214 of the Children's Health Insurance Program Reauthorization Act (CHIPRA, Pub. L. 111–3) or definitions proposed by the National Immigration Law Center and Asian and Pacific Islander American Health Foundation. Several commenters recommended that States have flexibility to continue using existing standards for lawfully present, as long as the rules are no more restrictive than Federal law. Many commenters recommended that we clarify that any list of ''lawfully present'' immigration categories is not exhaustive, as statuses and documents are constantly evolving.

Many commenters also suggested a range of additional categories to be included in the lawfully present definitions, including individuals whose immigration status makes them eligible to apply for an Employment Authorization Document regardless of whether they have secured a work permit under 8 CFR 274a.12; certain victims of trafficking who have been granted ''continued presence''; individuals granted a stay of removal/deportation by administrative or court order, statute, or regulations; individuals who are lawfully present in the Commonwealth of the Mariana Islands and American Samoa; individuals Permanently Residing in the U.S. under Color of Law; and asylum applicants (including pending applicants for asylum under section 208(a) of the Immigration and Nationality Act (INA), or for withholding of removal under section 241(b)(3) of the INA or Convention Against Torture).

Response: We maintain the definition of ''lawfully present'' as used in the Pre-Existing Condition Insurance Plan, which is consistent with the definition of ''lawfully present'' used in section 214 of CHIPRA, and included in the proposed rule. HHS will consider commenters' recommendations in developing future rulemaking on this definition as it relates to Medicaid, CHIP, and the Exchanges.

Comment: Several commenters recommended we adopt the broad, U.S. Census data definition for ''limited English proficient'' which is ''an individual whose primary language is not English and who speaks English less than very well.''

Response: In the final rule, we do not adopt a definition for the phrase ''limited English proficient.'' We anticipate issuing future guidance that will interpret this term and will provide best practices and advice related to meaningful access standards for limited English proficient individuals.

Comment: One commenter recommended that the definition for ''minimum essential coverage'' include both defined contribution and defined benefit plans, allowing individuals to use any health care funds to maximize their purchasing power. Another commenter suggested that the Federal definition of ''eligible employer sponsored plan'' be such that in

circumstances that an employer is not able to provide a threshold of quality coverage, a defined contribution combined with premium tax credits should be provided in the individual market Exchange.

Response: The definitions of ''minimum essential coverage'' and ''eligible employer sponsored plan'' are provided in section 5000A(f) of the Code and will be interpreted in Treasury guidance. The provisions of the Affordable Care Act that we implement through this final rule rely on those definitions from the Code.

Comment: One commenter believes that Navigators should not be an individual person, but rather a regulated entity/institution, noting that awarding Navigator grants to individuals will increase the potential for fraud and consumer protection violations.

Response: We maintain the definition for ''Navigator'' from the proposed rule. However, we have added Navigator standards in § 155.210(b) that are intended to reduce the potential for fraud and increase consumer protection.

Comment: Regarding the definition of ''plain language,'' one commenter recommended that all communications be provided in the individual's primary language. Several commenters recommended that we align with the National Institutes of Health's definition of ''plain language,'' including standards that communications be written between a fourth and sixth grade reading level, include non-written visuals, and reflect the likelihood that a proportion of individuals accessing the Exchange will not be familiar with utilizing online technologies.

Response: We maintain the definition of ''plain language'' as codified from section 1311(e)(3)(B) of the Affordable Care Act, which directs HHS and the Department of Labor to jointly develop and issue guidance on best practices of plain language writing.

Comment: One comment voiced concern that the definition of ''qualified health plan'' might potentially undermine a State that wanted to implement a standard that QHP issuers offer their QHPs outside of an Exchange.

Response: We note that, consistent with the Affordable Care Act provisions that address how issuers of QHPs may offer their products, nothing in this final rule precludes a QHP issuer from offering a QHP outside of an Exchange, which we believe leaves flexibility for States to establish the offering of QHPs outside of the Exchange as a condition of certification.

Comment: We received comments throughout to add the phrase ''and stand-alone dental plans providing the pediatric dental essential health benefit'' when referring to QHPs. One commenter requested that we define ''stand-alone dental plan.''

Response: In general, with some exceptions as noted in new § 155.1065(a)(3) of this final rule, we consider stand-alone dental plans to be a type of ''qualified health plan,'' and therefore believe that the addition of the suggested text is unnecessary. We believe that § 155.1065 sufficiently defines ''stand-alone dental plan'' for the purposes of participation in an Exchange, and a definition in § 155.20 would be duplicative.

Comment: We received several comments about the applicability of Medicare Secondary Payer (MSP) rules regarding coverage of End Stage Renal Disease (ESRD) and their applicability to QHPs as group health plans. These comments were received within the context of several sections, including: § 155.20, which defines the terms ''health plan'' and ''qualified health plan''; § 155.705 (Functions of a SHOP); § 155.1000 (Certification Standards for QHPs); and § 156.200 (QHP Participation Standards). Commenters recommended that MSP rules regarding coverage of ESRD apply to QHPs as group health plans.

Response: We clarify that QHPs offered in the small group market fall under the definition of a group health plan subject to MSP provisions codified in section 1862(b)(1) of the Social Security Act. This would result in parity between the SHOP and non-Exchange small group market regarding the applicability of MSP rules that pertain to ESRD coverage.

Comment: A few commenters suggested that the definition of ''State'' include the Territories.

Response: The definition of State is based on section 1304 of the Affordable Care Act, which does not include Territories. Section 1323 of the Affordable Care Act addresses Territories in the context of Exchanges and is not within the scope of this regulation.

Summary of Regulatory Changes

We are finalizing the definitions proposed in § 155.20, with the addition of the term ''educated healthcare consumer,'' which references the statutory definition for such term. As discussed in later sections, we also add a definition for ''application filer'' and ''Exchange Blueprint'' to provide more detail for the purposes of eligibility and enrollment and approval of State-based Exchanges. We also clarified the definition of ''applicant.'' Finally, we have replaced the text of definitions copied from the Affordable Care Act with a direct reference instead, including: ''eligible-employer sponsored plan,'' ''grandfathered health plan,'' ''health plan,'' ''individual market,'' ''plain language,'' and ''small group market.''

2. Subpart B—General Standards Related to the Establishment of an Exchange

The Affordable Care Act sets forth general standards related to the establishment of an Exchange and identifies a number of areas where States that choose to operate an Exchange may exercise operational discretion. This subpart sets forth approval standards for State-based Exchanges, as well as the process by which HHS will determine whether a State-based Exchange meets those standards.

a. Establishment of a State Exchange (§ 155.100)

We proposed to codify the option for States to elect to establish an Exchange to serve qualified individuals and qualified employers, provided that the Exchange is a governmental agency or non-profit entity established by the State and that the governance structure of the Exchange is consistent with § 155.110. Furthermore, we introduced the concept of a State Partnership model that would allow States to leverage work done by other States and the Federal Government.

Comment: Many commenters supported the general approach of State flexibility in the Exchange establishment proposed rule, while some urged additional flexibility and others requested more uniformity to decrease administrative complexity. Some topics where more uniformity was suggested include: minimum numbers of board meetings, conflict of interest standards, stakeholder consultation, call centers outside of normal hours, types of consumer outreach, notices, and access for limited English proficient individuals. Several commenters urged HHS to establish a menu of systems, functions, standard operating procedures, educational materials, reporting formats, and other tools that States could adopt for their Exchanges. One commenter suggested that States that use the HHS templates should receive an accelerated review process.

Response: Decreasing administrative complexity will assist States in Exchange establishment. States are encouraged to make use of materials available to them from other States and on HHS's Collaborative Application Lifecycle Tool (CALT). HHS is also

developing a Web portal that will allow continued sharing of information, business process flows, and templates to aid States in the establishment of their Exchange.

Comment: One commenter requested clarification on proposed § 155.100(a) regarding whether a State could only establish a SHOP, and not an Exchange to serve the individual market. Other commenters urged HHS not to allow administrative separation of the small group and individual markets between a State-based and Federally-facilitated Exchange.

Response: HHS will approve a State-based Exchange upon determining that all minimum functions of an Exchange are met, which includes providing access to QHPs to qualified individuals and to qualified employers through a SHOP.

Comment: In relation to proposed § 155.100(b), several commenters voiced support of the option for Exchanges to be operated through a non-profit or governmental entity. One commenter requested clarification on what is encompassed in ''governmental.'' Some commenters were concerned about accountability of non-profit entities and encouraged States to establish governmental or quasi-governmental entities. Several commenters requested clarification that stakeholders would still need to be consulted regardless of the governance entity.

Response: The discretion afforded States outlined in section 1311(d)(1) of the Affordable Care Act is critical. We do not provide additional clarification regarding what would be considered ''governmental'' in deference to existing State classifications. We note that § 155.130 of this final rule applies to all Exchanges.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.100 of the proposed rule without modification.

b. Approval of a State Exchange (§ 155.105)

In § 155.105, we proposed that the Secretary must determine by January 1, 2013 whether a State's Exchange will be fully operational by January 1, 2014 and outlined the proposed standards based upon which HHS will approve a State Exchange. Please refer to the preamble of the Exchange establishment proposed rule, at 76 FR 41870–41871, for a detailed discussion of these standards.

Specifically, we outlined the process through which HHS will approve a State-based Exchange. We proposed that to initiate the State Exchange approval process, a State must submit an Exchange Plan to HHS. We noted that we planned to issue a template outlining the components of the Exchange Plan, subject to the notice and comment process under the Paperwork Reduction Act. We proposed that each State receive written approval or conditional approval of its Exchange Plan in order to operate and to constitute an agreement between HHS and the Exchange to adhere to the contents of the Exchange Plan. We also proposed that a State must notify HHS and receive written approval from HHS before significant changes are made to the Exchange Plan. We sought comment on whether the State Plan Amendment process offered an appropriate model for change submission and approval.

Finally, we proposed to codify the provision in the Affordable Care Act that if a State elects not to establish an Exchange—or if the State's Exchange is not approved—HHS must establish an Exchange in that State, and we proposed standards of the proposed rule that would apply to a Federally-facilitated Exchange.

Comment: Many commenters were concerned that the approval date of January 1, 2013 for State-based Exchanges, as described in proposed § 155.100(a), will be difficult for many States to meet and suggested that HHS allow more flexibility or issue waivers for States that cannot meet the timeframes. One commenter suggested that HHS approve an Exchange if a State has passed enabling legislation, or has the necessary regulatory process for Exchange creation underway by January 1, 2013, and can provide HHS with a detailed plan and timeline for Exchange development. In contrast, several commenters supported the January 1, 2013 approval deadline and requested that HHS closely monitor and enforce the implementation timeline.

Several commenters also supported conditional approval and noted that it could help States meet the timelines for Exchange development. One commenter requested additional information on conditional approval, including the latest date when HHS could revoke conditional approval and interim deadlines and benchmarks. Another commenter did not support conditional approval and felt it diluted Federal scrutiny, while others expressed concern that conditional approval would result in States beginning open enrollment late, in a diminished capacity, or in a way that impairs HHS's ability to implement a Federally-facilitated Exchange.

Response: We believe that in order to meet the October 1, 2013 open enrollment date, a State-based Exchange must be approved or conditionally approved by January 1, 2013, as called for in section 1321(c)(1)(B) of the Affordable Care Act. HHS may conditionally approve a State-based Exchange upon demonstration that it is likely to be fully operationally ready by October 1, 2013, which provides States with flexibility in meeting Exchange development timelines. HHS will provide additional details in future guidance.

Comment: One commenter suggested that proposed § 155.105(b) include additional confidentiality standards, including that an Exchange comply with section 1411(g) of the Affordable Care Act and the Privacy Act (5 U.S.C. 552a).

Response: HHS is committed to ensuring that security and privacy standards are in place in an Exchange. Security and privacy standards are addressed in § 155.260 and § 155.270 of this final rule. We believe it is duplicative to include these standards in § 155.105(b).

Comment: Several commenters requested that the rule regarding the geographic area described in proposed § 155.105(b)(4) be modified to clearly indicate that where there are multiple Exchanges, with each Exchange serving a distinct geographic area, that consumers could only use one Exchange. Several commenters suggested that HHS establish that the distinct geographic areas be consistent with premium rating areas in the State as determined under section 2701(a)(2) of the PHS Act.

Response: In the preamble to the Exchange establishment proposed rule for § 155.105, we clarified that only one Exchange may operate in each geographically distinct area and that a subsidiary Exchange must be at least as large as a rating area. We maintain this position in the final rule, which we believe provides States with discretion to ensure that subsidiary Exchange service areas are consistent with rating areas.

Comment: Several commenters requested that the proposed Exchange Plan described in proposed § 155.105(c)(1) be subject to a public comment period before HHS approval. One commenter asked that HHS post documents related to the proposed Exchange Plan and operational readiness on the HHS Web site.

Response: We believe that accelerating timeframes to accommodate a period for public comment on what we now refer to as ''Exchange Blueprints'' would put unreasonable pressure on what is already perceived as a tight timeline. Therefore, in order to maintain flexibility and because of

timeframe concerns, the final rule does not call for a State's Exchange Blueprint to be made public and open to comment prior to approval by HHS.

Comment: One commenter supported the proposal that the operational readiness assessment conducted by HHS, as described in proposed § 155.105(c)(2), be coordinated with the monitoring process of the State Establishment Grants provided under section 1311 of the Affordable Care Act.

Response: We believe that the operational readiness assessment should be coordinated with the grants monitoring process and are currently developing guidance for the evaluation process.

Comment: In relation to proposed § 155.105(d) and (e), several commenters supported using a process modeled from the Medicaid and CHIP State Plan review process for the approval of the initial Exchange and subsequent changes, including the 90-day review timeframe and posting of changes on the Internet, and because they believe that the process ensures sufficient Federal oversight and transparency. In contrast, many other commenters urged HHS to use a review plan other than the Medicaid and CHIP model, contending that the State Plan review process would delay State implementation while waiting for an HHS review that could potentially take up to 180 days. The commenters suggested that the proposed approach would be unwieldy, especially where HHS requests for additional information from States would restart the 90-day period, and would inhibit States from being able to effectively establish an Exchange and respond to changing circumstances over time.

Response: We believe that initial approval of an Exchange and approval of subsequent changes should not cause unnecessary delay in Exchange implementation or future operations. Therefore, HHS will not model the review of the initial proposed Exchange Plan or future changes after the Medicaid and CHIP State Plan process. Additionally, we have changed reference of the ''Exchange Plan'' to ''Exchange Blueprint'' to avoid confusion with the Medicaid and CHIP review process. Finally, we amended § 155.105(e) to provide that when a State makes a written request for approval of a significant change to Exchange Blueprint, the change may be effective on the earlier of 60 days after HHS receipt of a completed request, or upon approval by HHS. For good cause, HHS may extend the review period an additional 30 days to a total of 90 days. We note that during the review period, HHS may deny the significant change to the Exchange Blueprint.

Comment: Several commenters sought more information and provided suggestions on the establishment and operation of the Federally-facilitated Exchange described in proposed § 155.100(f), including: the overall structure, governance, oversight, and standards; how it would differ from State to State; the approach to certification of QHPs (''active purchaser'' versus ''any willing plan''); and, what the relationship would be between a Federally-facilitated Exchange and Partnership model. One commenter expressed concern about consumer advocates' ability to engage in the governance and oversight of a Federally-facilitated Exchange, while other commenters requested that the Federally-facilitated Exchange's planning documents and updates should be subject to public notice and comment.

Response: Information regarding the Federally-facilitated Exchange will be provided in future guidance.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.105 of the proposed rule, with the following modifications: in paragraph (a), we added clarifying language regarding the timeframe for Exchange approval, and clarified that HHS may consult with other relevant Federal agencies to approve a State-based Exchange. Throughout § 155.105, we changed ''Exchange Plan'' to ''Exchange Blueprint.'' We included subpart D in the list of Exchange functions in paragraph (b)(2) because we are finalizing the Exchange establishment and eligibility rules together, and removed the policy that States agree to perform responsibilities related to the reinsurance program because we are not finalizing the operation of the reinsurance program in connection with Exchange establishment. We amended paragraph (e) to provide timeframes for the approval of significant changes to the Exchange Blueprint.

c. Election To Operate an Exchange After 2014 (§ 155.106)

We proposed to give States the opportunity to seek approval to operate an Exchange after the statutory date of January 1, 2013. Specifically, we proposed that a State electing to operate an Exchange after 2014 must have in effect an approved or conditionally approved Exchange Plan at least 12 months prior to the first effective date of coverage, or January 1 of the prior year. Further, a State must work with HHS to develop a plan to transition from a Federally-facilitated Exchange (including a Partnership) to a State-based Exchange.

We also proposed a process to allow a State-based Exchange to cease its operations after January 1, 2014 and to elect to have the Federal government establish and operate an Exchange within the State, provided that the State notifies HHS of this determination 12 months prior to ceasing its operations and collaborates with HHS on the development and execution of a transition plan.

Comment: One commenter stated that the deadlines set by the Affordable Care Act for setting up a State-based Exchange are not realistic and that HHS should extend them.

Response: We understand the concerns regarding the deadlines for setting up a State-based Exchange. While we do not believe authority exists in section 1321(c) of the Affordable Care Act to alter the January 1, 2014 Exchange implementation date, we proposed § 155.106 to alleviate some of the timing pressure. We maintain that approach in this final rule.

Comment: Numerous commenters supported the flexibility for a State to elect to operate an Exchange after 2014, and several requested more detail on the transition plans in proposed § 155.106(a)(3). Suggestions for the transition plan included: demonstration of consumer input and tribal consultation; process for educating consumers about potential changes; process for ensuring QHP issuers have sufficient time to comply with new standards (such as a one-year grace period); and, a plan to protect enrollees from lapses of coverage. A number of commenters recommended a State-based Exchange starting after 2014 must have similar or better levels of insured rates, affordability, covered benefits, and administrative simplicity or quality of services.

Response: We believe that it is important to develop a seamless transition plan for consumers and issuers alike, and will provide future guidance on transition plans.

Comment: Several commenters requested clarification on the process for transitioning to a Federally-facilitated Exchange in proposed § 155.106(b) when a State terminates Exchange operations with less than twelve months notice to HHS. One commenter urged HHS to establish an alternative process for providing interim coverage to consumers if a State does not provide sufficient notice.

Response: We understand concerns regarding the transition timeframes.

HHS will develop an approach to transitioning Exchanges in various circumstances when it becomes clearer what such circumstances would entail.

Comment: One commenter requested information as to the availability of funding options for States electing to operate an Exchange after 2014.

Response: As described in the State Exchange Implementation Questions and Answers released by HHS on November 29, 2011, establishment grants may be awarded through the end of 2014 for approved and permissible establishment activities. The process of ''establishing'' an Exchange may extend beyond the first date of operation and may include improvements and enhancements to key functions over a limited period of time. Generally, grants can be used to establish Exchange functions and operating systems and to test and improve systems and processes. We have determined that a State that does not have a fully approved State Exchange on January 1, 2013 may continue to qualify for and receive a grant award, subject to the Funding Opportunity Announcement (FOA) eligibility criteria.

Summary of Regulatory Changes

We are finalizing the provisions in § 155.106 of the proposed rule, with a conforming, technical change that replaced ''Exchange Plan'' with ''Exchange Blueprint'' in paragraph (a)(2) and removed the word initial from paragraph (a) to make the provision more broad.

d. Entities eligible to carry out Exchange functions (§ 155.110)

In § 155.110, we proposed to codify an Exchange's authority to contract with eligible entities, and requested comment on conflict of interest standards. We noted that the Exchange remains responsible for meeting all Federal rules related to contracted functions.

If the Exchange is an independent State agency or not-for-profit entity established by the State, we proposed that its governing board meet the standards outlined in § 155.110(c)(1) through § 155.110(c)(4) of the proposed rule, which included: the Exchange accountability structure must be administered under a formal, publicly-adopted operating charter or by-laws; the Exchange board must hold regular public meetings; representatives of health insurance issuers, agents, brokers, or other individuals licensed to sell health insurance may not constitute a majority of the governing board; and, all members of the governing board must meet conflict of interest and qualifications standards. We invited comment on several topics related to conflict of interest and Exchange governance.

We also proposed that the Exchange governing body ensure that a majority of members have relevant experience in a number of areas and invited comment on the types of representatives that could best ensure successful Exchange operations. We solicited comment on ethics and disclosure standards.

Additionally, we proposed to allow a State to operate its individual market Exchange and SHOP under separate governance or administrative structures, provided that the State coordinates and shares relevant information between the two Exchange bodies and that it ensures adequate resources to assist both individuals and small employers.

Finally, we proposed that HHS retain the option to review the accountability structure and governance principles of an Exchange and requested comment on the appropriate frequency for these reviews.

Comment: A number of commenters requested clarification on whether State departments of insurance would be considered eligible contracting entities under proposed § 155.110(a), citing the importance of such expertise in the operation of an Exchange.

Response: We clarify in § 155.110(a)(2) of this final rule that, in addition to State Medicaid agencies, other State agencies that meet the qualifications in (a)(1) would be considered eligible contracting entities. For purposes of this final rule and Exchange operations, we interpret the term ''incorporated'' in (a)(1)(i) to include State agencies, such as departments of insurance, that have been established under and are subject to State law.

Comment: Several commenters urged HHS to apply conflict of interest standards to eligible contracting entities.

Response: We generally defer to States to establish conflict of interest standards for eligible contracting entities beyond the prohibition of health insurance issuers being eligible contracting entities, as established in section 1311(f)(3) of the Affordable Care Act and codified in § 155.110(a)(1)(iii). We believe that many States have existing conflict of interest laws, have appropriate expertise in this area, and can support Exchanges in the development of conflict of interest standards for such entities.

Comment: Several commenters agreed with the governance provisions in proposed § 155.110(c) and requested further guidance on governance, while others recommended that HHS defer to States on governance citing concerns of burden. Another commenter suggested that all Exchanges, including an Exchange that is a State agency, needed a governing board. One commenter requested that all Exchanges post their policies and procedures on the Internet.

Response: We have afforded States substantial discretion regarding governance and do not believe that the governance standards are burdensome from an operational or systems standpoint. Additionally, to lessen the burden on States, an Exchange may use the State's conflict of interest standards, regulations, or laws for governance of the Exchange. An existing State agency would already have an accountability structure, unlike an independent agency or nonprofit entity. Therefore, we believe that a governing board is not necessary for an existing State agency, although we note that a State may choose to establish one anyway. Section 155.110(d) of this final rule directs Exchanges to make publicly available a set of guiding governance principles, which it may do through the Internet. We also create minimum standards for consumer representation on Exchange Boards to protect consumers and the interests of the Exchange without adding burden on States or Exchanges.

Comment: With respect to proposed § 155.110(c)(3), a few commenters requested HHS define ''represents consumer interests'' and ''conflict of interest.'' Many commenters recommended that all Exchange boards must have at least one consumer representative or advocate and a formal consumer advisory committee. A few commenters recommended increasing the threshold for voting members that do not have a conflict of interest to something higher than a simple majority.

Response: We accept the suggestion that at least one voting member be a consumer advocate, and have amended in § 155.110(c)(3)(i) of this final rule accordingly. We do not believe this change will conflict with any current Exchange boards. We have also maintained the minimum standard that a simple majority of board members not have a conflict of interest, but a State can choose to establish an Exchange with a higher threshold of non-conflicted board members.

Comment: Commenters suggested broadening the list of groups identified as having a conflict of interest in proposed § 155.110(c)(3)(ii) to include: health care providers; anyone with a financial interest; anyone with a spouse or immediate family with a conflict of interest; major vendors, subcontractors, or other financial partners of conflicted parties; members of health trade

associations and providers; and, health information technology companies. Commenters recommended that such groups be limited or prohibited from participation in an Exchange. Other commenters recommended that individuals with ties to the insurance industry participate through technical panel or advisory group instead of through board membership.

Response: As proposed, § 155.110(c)(3)(ii) ensures as a minimum standard that the groups with the most direct conflict of interest cannot form a majority of voting members on a governing board. We believe that further definition of conflict of interest may create inconsistencies with State law and other existing State standards, but note that Exchanges may expand the list or further define conflict of interest. For example, a State may elect to prohibit any conflicted members from serving on the board.

Comment: Several commenters suggested areas in addition to those listed in proposed § 155.110(c)(4) in which governing board members should have experience, including: minority health; mental health; pediatric health; consumer education or outreach; public coverage programs; health disparities; or represent or be American Indian and Alaska Natives. A few commenters suggested that the Exchange board include members that reflected the cultural, ethnic and geographical diversity of the State.

Response: Each of the suggested groups could add value to an Exchange governance board. However, we believe that a State can determine the expertise it believes would be most beneficial for the needs of its community. We note that the list in § 155.110(c)(4) is a minimum; thus, States may establish governing boards standards that include expertise in other areas, or may set up advisory committees to achieve another mechanism for specialized input.

Comment: Regarding proposed § 155.110(f), some commenters suggested that HHS limit review of an Exchange's governance to every three or four years, while several commenters voiced concerns about the administrative burden of an annual review. One commenter recommended an annual review but only for the first few years of Exchange operation.

Response: We have maintained language in the final rule but clarify that any changes to the accountability structure and governing principles of the Exchange will likely be reviewed under § 155.105(e) of this final rule or at the discretion of HHS through a process that may not occur annually under § 155.110(f).

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.110, with the following modifications: in paragraph (a)(1)(iii)(2), we clarified that any State entity that meets the qualifications of paragraph (a)(1) is an eligible contracting entity to include State departments of insurance. We established in new paragraph (c)(3)(i) that at least one member of the Exchange's board must include one voting member who is a consumer representative, and renumbered proposed paragraph (c)(3)(i) as (c)(3)(ii).

e. Non-interference with Federal Law and Non-Discrimination Standards (§ 155.120)

In § 155.120, we proposed that an Exchange may not establish rules that conflict with or prevent the application of Exchange regulations promulgated by HHS. We also proposed to codify that nothing in title I may be construed to preempt any State law that does not prevent the application of the provisions set forth under title I of the Affordable Care Act. In addition, we proposed that a State must comply with any applicable non-discrimination statutes, specifically that a State must not operate an Exchange in such a way as to discriminate on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation.

Comment: One commenter suggested that HHS ensure that contractors comply with the non-discrimination provisions of proposed § 155.120. One commenter recommended HHS amend § 155.120(c) to explicitly name specific activities of the Exchange, including marketing, outreach, and enrollment in the Exchange.

Response: We clarify that § 155.120 applies to Exchange contractors and believe this notion is conveyed in § 155.110(b) for contractors. We believe that § 155.120 already applies to all activities of the Exchange, and thus do not explicitly list marketing, outreach, and enrollment.

Comment: Several commenters recommended that HHS specify that proposed § 155.120(b) functions as a floor for protection against discrimination. The commenters stated that in the event a State law provides additional consumer protections in an Exchange, the final rule should make clear that such a State law will prevail over the minimum protections codified in Federal law.

Response: We believe the proposed approach of codifying section 1321(d) of the Affordable Care Act does not preclude the application of stronger protections in the Exchange provided by State law. Therefore, we do not make any further changes in the regulations to make this clarification.

Comment: A number of commenters requested that HHS provide clarification on proposed § 155.120(c)(1) and specify which statutes would be considered ''applicable non-discrimination statutes,'' with suggestions including the Americans with Disabilities Act, section 504 of the Rehabilitation Act, section 1557 of the Affordable Care Act, provider non-discrimination in accordance with section 2706 of the PHS Act. One commenter recommended that HHS ensure that States and Exchanges comply with existing State provider non-discrimination laws and another recommended that we amend the § 155.120(c)(1) to include consumer protection laws.

Response: We clarify that by ''applicable non-discrimination statutes,'' we mean any statute that would apply to Exchange activities by its clear language or as consistent with any rulemaking that has been established in accordance with such statutes. We acknowledge that the some non-discrimination statutes apply to specific activities and situations, and an Exchange must comply with such statutes to the extent its activities or circumstances would be subject to these standards.

Comment: We received a comment on the preamble to the proposed § 155.120(c)(2). The commenter recommended that HHS delete the phrase ''operating in such a way as to discriminate'' or revise the nondiscrimination standard to prohibit discrimination based ''solely'' on the listed grounds.

Response: To clarify, we believe that Exchanges should not discriminate in any way on the basis of groups listed in § 155.120(c)(2). We believe that the regulatory text conveys that intent.

Comment: A number of commenters recommended HHS amend proposed § 155.120(c)(2) to add categories to the proposed list, including Indians or individuals in the Lesbian, Gay, Bisexual, and Transgender (LGBT) community, individuals with limited English proficiency, and people with disabilities.

Response: We recognize the commenters' concerns but we are maintaining the categories specified in § 155.120(c) because we believe that categories not listed in § 155.120(c)(2) are already protected by existing laws that apply to Exchanges.

Comment: A number of commenters requested that HHS provide clarification

on the oversight and enforcement of the non-discrimination standards, including recommendations for strong oversight, the establishment of a clear complaints process, and mandatory public dissemination of an acknowledgement by QHP issuers that they comply with the non-discrimination standards in section 1557 of the Affordable Care Act.

Response: We acknowledge the commenters' concerns regarding the monitoring and enforcement of the non-discrimination policies. We plan to issue future guidance on the oversight and enforcement of the non-discrimination standards.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.120 of the proposed rule, with a technical change to include part 157 in paragraph (b).

f. Stakeholder Consultation (§ 155.130)

Consistent with the Affordable Care Act, we proposed that Exchanges consult with certain groups of stakeholders on an ongoing basis. The list of stakeholders identified were the following: educated health care consumers who are enrollees in QHP; individuals and entities with experience in facilitating enrollment in health care coverage; advocates for enrolling hard to reach populations; small businesses and self employed individuals; State Medicaid and CHIP agencies; Federally-recognized Tribes; public health experts; health care providers, large employers; health insurance issuers; and agents and brokers. For a more complete list of stakeholders and for a discussion of how Exchanges may interact with tribes, please refer to page 41873 of the Exchange establishment proposed rule.

Comment: Some commenters requested clarification on what it means to ''regularly consult on an ongoing basis,'' as described in proposed § 155.130, and suggested that we clarify that an Exchange must consult with stakeholders beyond establishment of the Exchange, outlining specific processes for consultation (including public meetings and input sessions), and specifying that Exchange activities must be topics of consultation (including the call center, Web site, consumer assistance functions and Navigators).

Response: We recognize that it is important to utilize various methods of consultation to ensure the Exchange meets the diverse needs of the State's population and seeks input on a broad set of issues. However, we believe that States are in the best position to determine what will be the most efficient and effective methods of stakeholder consultation for meeting the State's unique needs and, therefore, we do not establish additional standards in the final rule.

Comment: Many commenters recommended that HHS add additional categories of stakeholder groups to proposed § 155.130, including: a nonprofit community organization; unions; representatives of individuals with disabilities; minorities; advocates for individuals with limited English proficiency; essential community providers; employees of small businesses; stand-alone dental plans; health care consumer advocates; experts in low income tax policy; experts in privacy policy; and professional organizations representing specific health care providers. Several commenters requested clarification on what types of health insurance issuers and providers fall under the categories for consultation. A few commenters suggested that we narrow the list of stakeholders.

Response: We recognize that Exchange consultation with the above groups would help the Exchange ensure it can meet the needs of the population it serves. However, we believe that the categories proposed in § 155.130 are broad enough to encapsulate a wide variety of stakeholders, and encourage Exchanges to consult with any other stakeholders that will add perspective to the development of an Exchange. Similarly, we did not accept suggestions to make the stakeholder categories narrower and believe the minimum list proposed will stimulate stakeholder participation. Exchanges have the flexibility to determine what types of stakeholders would fall under each of the categories.

Comment: Regarding proposed § 155.130(a), one commenter was concerned that including ''educated health care consumer'' as a stakeholder unfairly excludes people of a certain education level. Another commenter recommended that HHS delete the word ''educated'' from ''educated health care consumer'' to avoid multiple interpretations. Numerous commenters recommended that HHS replace ''educated health care consumer'' with ''health care consumer experienced with the system.'' One commenter suggested that the definition of ''educated health care consumers'' take into account the diversity in the age, background, and health status of consumer stakeholders. A few commenters suggested that HHS expand the stakeholder group to include consumers who are eligible or likely to enroll in a QHP in addition to those consumers enrolled in QHPs.

Response: We note that the term ''educated health care consumer'' is defined in section 1304(e) of the Affordable Care Act to mean an individual who is knowledgeable about the health care system, and has background or experience in making informed decisions regarding health, medical, and scientific matters; we have codified this definition in § 155.20 of this final rule. An Exchange can interpret and apply the term in the way that is most appropriate for its environment consistent with this definition.

Comment: Regarding proposed § 155.130(f), commenters recommended that the final rule prohibit States from delegating consultation with Federally-Recognized Tribes to the governing bodies operating the Exchange. Commenters noted that establishing Exchanges as independent public entities would make stakeholder consultation difficult to monitor consultation with Tribes. Several commenters suggested that a tribal consultation policy be developed and approved by the State, the Exchange, and tribal governments prior to the submission of approval of an Exchange Blueprint. Some commenters also recommended that States must utilize a process for seeking advice from the Indian Health Service, tribal organizations, and urban Indian organizations as outlined in section 5006(e) of the American Recovery and Reinvestment Act. Also, one commenter requested HHS to expand the tribal consultation standard to include any tribal organization or inter-tribal consortium as defined in the Indian Self-Determination and Education Assistance Act and the Indian Health Care Improvement Act.

Response: Section 1311(d)(6) of the Affordable Care Act directs the Exchange to carry out consultation with stakeholders, and § 155.130(f) codifies this provision with respect to Federally-recognized Tribes. We note that Exchange tribal consultation reflects a government-to-government relationship, as Exchanges would conduct consultation on behalf of States. Future guidance will be provided to States regarding key milestones, including tribal consultation, for approval of a State-based Exchange. Because of the government-to-government nature of tribal consultation, we did not include a provision similar to section 5006(e) of the American Recovery and Reinvestment Act in the proposed rule or in this final rule, and did not expand the tribal consultation standard to include tribal organizations, programs, or commissions. In the final rule,

Exchanges must consult with Federally-recognized Tribes; however, this does not preclude Exchanges from engaging in discussions or consulting with tribal and Urban Indian organizations. It should be noted that when a tribal or Urban Indian organization is a stakeholder as defined in § 155.130—for example, the tribal or Urban Indian organization is a health care provider—then consultation may be necessary. We therefore encourage States to consult with tribal and Urban Indian organizations.

Comment: Some commenters recommend that as a component to the ongoing tribal consultation standard in proposed § 155.130(f), the Exchange should establish an ''Indian desk'' with the lead person identified and contact information provided, and extend the authority of CMS Native American Contacts to include facilitating and interacting with the State Exchange governing bodies.

Response: We did not accept the suggestion that all Exchanges must establish an ''Indian Desk.'' States have discretion to determine appropriate approaches and mechanisms for interacting with the Tribes, providing information to Indian Country and for meeting the needs of American Indians/Alaska Natives, which can be determined during the tribal consultation process. We also did not accept the suggestion related to the CMS Native American Contacts. While we recognize that the Native American Contacts have a critical role in working with States and Tribes, structuring the responsibilities of CMS staff positions is not within the scope of this final rule.

Comment: A few commenters suggested that the final rule enforce tribal consultation by Exchanges in the planning, implementation and operation of State-based Exchanges, and ensure adequate funding for the technical assistance provided by tribal entities to States and Exchanges. One commenter expressed a concern that Exchanges may not be able to process eligibility and enrollment information regarding American Indians/Alaska Natives unless they are included in policy and regulation development. Some commenters strongly urge CMS to work with Tribes to undertake a thorough education of State insurance commissioners on issues related to Indian law, the structure of the Indian health care delivery system, and protocols for consulting with Tribes, since many Tribes do not have experience working with insurance commissioners.

Response: We did not accept the suggestion for Exchanges to obligate State grant funding for technical assistance provided by tribal entities to States and Exchanges. We believe that the concern regarding Exchange inclusion of American Indians and Alaska Natives in policy development is addressed in the final rule and the Exchange Establishment Grant, which directs Exchanges to consult with Federally-recognized Tribes. We note that education of State health insurance commissioners on Indian law will be addressed at the operational level of CMS.

Comment: We received a number of comments stating that HHS should limit the number of consultations with health insurance issuers, agents, and brokers described in proposed § 155.130(j) and (k) to minimize any potential conflicts of interest. One commenter recommended that consultation with a health insurance issuer be made fully transparent, while several other commenters recommended that the consultation only include agents and brokers that enroll qualified individuals, employers, or employees.

Response: We understand the concerns of commenters, but also acknowledge that health insurance issuers and agents and brokers are likely to play a significant role in the Exchange. We encourage Exchanges to be transparent in the consultation process. Furthermore, in States where the Exchange is not housed in the department of insurance, we expect there to be regular consultation between the Exchange and the department of insurance, given the need for coordination between the two entities.

Comment: One commenter recommended that stakeholder input should contribute to both State-based Exchanges and Federally-facilitated Exchanges.

Response: As indicated in § 155.105(f), the stakeholder standards of § 155.130 apply to both Federally-facilitated Exchanges and State-based Exchanges.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.130 of the proposed rule without modification.

g. Establishment of a Regional Exchange or Subsidiary Exchange (§ 155.140)

In § 155.140, we outlined several proposed features of regional Exchanges, including that a regional Exchange would encompass two or more States and could submit a single Exchange Blueprint, and the criteria that the Secretary will use to approve such an Exchange.

Specifically, we proposed that a State may establish one or more subsidiary Exchanges if each such Exchange serves a geographically distinct area that is at least as large as a rating area described in section 2701(a) of the PHS Act. We invited comment on operational or policy concerns related to subsidiary Exchanges that cross State lines. We also requested comment on the extent to which we should allow more flexibility in the structure of a subsidiary Exchange.

Finally, we proposed basic standards for a regional or subsidiary Exchange. For a complete discussion of the proposed standards, please see pages 41873–41874 and 41914 of the Exchange establishment proposed rule.

Comment: Regarding proposed § 155.140(a), several commenters supported the flexibility to establish regional Exchanges so that States could share Exchange infrastructure and systems. However, other commenters had concerns regarding the applicability of State standards across a regional Exchange. Some were concerned about coordinating the regulation of QHP issuers in a regional Exchange to ensure each State's insurance standards were met, especially regarding licensure and solvency, and others raised concerns about coordination between the Medicaid agencies of multiple States regarding consistency of eligibility determinations and provider payments. Other commenters were concerned that consumer protections, including State non-discrimination laws, minimum benefit standards, network adequacy, complaints processes, and tribal consultation, would be potentially undermined by a regional Exchange (particularly one that crosses non-contiguous States). Some commenters suggested that States must provide a compelling reason to establish a regional Exchange to help preserve consumer protections.

Response: We acknowledge the commenters' concerns regarding coordination across States. We note that in § 155.140(c)(1), we establish that a regional or subsidiary Exchange must meet all Exchange standards, which would include, for example, the standard in § 156.200(b)(4) that a QHP issuer be licensed and in good standing in each State in which it offers coverage. We believe that this and other provisions in the final rule provide some clarity on coordination. We recognize the concerns regarding consumer protection, and HHS will take those into account on a case-by-case basis during review of a regional Exchange Blueprint.

Comment: With regard to proposed § 155.140(a), one commenter requested clarification on whether a regional Exchange would need to cover the entirety of each State, and another requested clarification on whether two States could share administrative resources without sharing governance.

Response: We note that in § 155.140(c)(1), a regional Exchange would have to comply with all Exchange standards, including § 155.105(b)(3), which directs a State to ensure that the entire geographic area of a State is covered by an Exchange. A State has flexibility in the way it meets this standard. We believe that States are able to share administrative and operational resources to the extent practicable, and would not be considered a regional Exchange unless they also shared governance, consumer assistance, enrollment and eligibility processes, QHP certification authority, and the SHOP.

Comment: Regarding proposed § 155.140(b), a number of commenters did not support the proposed rules regarding subsidiary Exchanges out of concern for consumer protections, consumer confusion, administrative complexity, the effect of smaller risk pools, and the ability for subsidiary Exchanges to exacerbate adverse selection. Commenters suggested that a State must demonstrate a compelling justification as to how a subsidiary Exchange would be in the best interest of consumers. Some commenters suggested that subsidiary Exchanges should remain under centralized State governance and policy decisions to provide some consistency across the State. A number of commenters supported the provision in proposed § 155.140(b)(2) that ensures a subsidiary Exchange is as large as a rating area because they believe it would prevent risk selection. Several commenters urged HHS not to allow subsidiary Exchanges to cross State lines while others supported the concept.

Response: We recognize the concerns of commenters related to the consumer experience under subsidiary Exchanges, but we believe that such Exchanges may be valuable and appropriate in some marketplaces. In reviewing a State's Exchange Blueprint, HHS will consider how best to protect the consumer experience.

Comment: A few commenters requested clarification on whether an Exchange can be statewide for the individual market with several SHOPs operated through subsidiary Exchanges. Several commenters supported the alignment of SHOP and individual market Exchange service areas to ensure consistency for consumers and insurers, and for a more robust insurance market.

Response: In this final rule, we maintain the standard in § 155.140(c)(2)(ii) that the service areas of a SHOP and individual market Exchange must match.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.140 of the proposed rule without modification.

h. Transition Process for Existing State Health Insurance Exchanges (§ 155.150)

In § 155.150, we proposed that, unless determined to be non-compliant, a State operating a pre-Affordable Care Act exchange is presumed to be in compliance with the standards set forth in this part if: (1) The exchange was operating before January 1, 2010; and (2) the State has insured a percentage of its population not less than the percentage of the population projected to be covered nationally after the implementation of the Affordable Care Act. We invited comment on which proposed threshold should be used and on alternative data sources. We also proposed that any State that is currently operating a health insurance exchange that meets these criteria must work with HHS to identify areas of non-compliance with the standards of this part.

Comment: A small number of commenters had suggestions for proposed § 155.150(a). A few commenters suggested that we use the Congressional Budget Office estimates for projected coverage in 2016 and others recommended the Census Bureau's American Community Survey or the Current Population Survey estimates of State coverage on January 1, 2010. A number of commenters suggested using a source that included Urban Indian-specific data, while another commenter suggested the coverage numbers be based on non-elderly State residents only. One commenter raised concerns that coverage numbers are calculated inaccurately at the State level.

Response: We have amended proposed § 155.150(a)(2) to reference the Congressional Budget Office projected coverage numbers published on March 30, 2011. HHS will work with any State that believes it would fall into this category to determine if its State coverage numbers were equal to or above that threshold in January of 2010.

Comment: Several commenters suggested that proposed § 155.150(b) should provide additional information, provide for an expedited review process, make corrective action plans publicly available, establish that determining compliance will occur by fall 2012, and otherwise remain consistent with the January 1, 2013 timeframe for Exchange approval.

Response: We believe that any State that qualifies under § 155.150(a) would continue to generally meet all standards for Exchange approval as established elsewhere in the final rule, including the process for review and timeframes, so we do not believe it necessary to outline standards in this section.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.150 of the proposed rule, with the exception of specifying the database for the projected coverage numbers upon implementation.

i. Financial support for continued operations (§ 155.160)

In § 155.160, we proposed to codify the statutory provision that a State ensure its Exchange has sufficient funding to support ongoing operations beginning January 1, 2015 and develop a plan for ensuring funds will be available. Specifically, we proposed to allow a State Exchange to fund its ongoing operations by charging user fees or assessments on participating issuers or by generating other forms of funding, provided that any such assessments are announced in advance of the plan year. We invited comment on whether the final regulation should otherwise limit how and when user fees may be charged, and whether such fees should be assessed on an annual basis.

Comment: In response to proposed § 155.160, several commenters stated that an Exchange must not be approved by HHS unless a clear plan to achieve financial sustainability has been articulated. Further, commenters recommended that an Exchange also address the implications of its selected fee structure with respect to adverse selection and identify strategies to mitigate this risk.

Response: A clearly defined plan for financial sustainability is essential to Exchange success and in § 155.160(b), we codify section 1311(d)(5)(A) of the Affordable Care Act, which establishes that a State ensure that its Exchange has sufficient funding to support its operations beginning January 1, 2015. As noted in the preamble to the proposed rule, a funding plan is necessary for Exchange approval. States should conduct an analysis of various user fee structures as well as other financial support options before making a decision. This analysis could include, among other factors, the potential impact on risk selection, issuer

participation, consumer experience, and provider contracting. We maintain the codification in this final rule.

Comment: With respect to proposed § 155.160(b), many commenters offered specific recommendations on how Exchanges should generate revenue, including methods for calculating assessments, such as percent of premium with or without a cap; per-policy fees; or establishing fees at a specified amount. Commenters also recommended uniform notice standards, such as 10 or 12 months in advance of the relevant plan or benefit year, or in March of each year. A few commenters recommended specific frequencies of collection, such as monthly.

Response: The Affordable Care Act directs Exchanges to be self-sustaining and provides flexibility for Exchanges to generate support for continued operation in a variety of ways, such as through user fees. Accordingly, we do not limit Exchanges' options in the final rule by prescribing or prohibiting certain approaches. We believe that user fees parameters, as well as the need for other revenue-generating strategies, may vary by State depending upon several factors such as the number of potential enrollees and the Exchange's operational costs. Consistent with this flexibility, we have not finalized the proposal that the Exchange announce user fees in advance of the applicable plan year, and instead look to Exchanges that opt to charge user fees to establish a deadline and vehicle for such announcement, as well as the frequency with which the Exchange will collect such fees.

Comment: Some commenters expressed support for the flexibility provided with respect to funding for ongoing operations as specified in proposed § 155.160(b). Others recommended a centralized approach to assessments or raised concerns about specific approaches for generating revenue, such as a provider or general tax. A few commenters requested that HHS provide technical assistance to States in developing assessment structures.

Response: Exchange flexibility in funding ongoing operations is critical, as we believe that the ability to pursue specific funding strategies may vary by State. We encourage Exchanges to consider the implications of various fee structures on all stakeholders before making a selection, but note that the Exchange has discretion to set parameters related to assessments. As we have noted previously, HHS is committed to working with States on a variety of Exchange features, including but not limited to financial sustainability.

Comment: In response to the reference to the definition of ''participating issuer'' in proposed § 156.50, many commenters made recommendations regarding the types of issuers that should be subject to any assessments established by the Exchange. The majority of commenters advocated for a broad-based approach in which all issuers would be subject to the assessment. Fewer commenters recommended a narrower approach or that certain plans, such as excepted benefit plans, be excluded. Finally, several commenters requested that the final rule clarify that Exchanges will identify the issuers subject to any assessment.

Response: The Exchange should identify the issuers that are subject to any user fees or other assessments, if applicable. This could include all participating issuers, as defined in § 156.50 of this final rule, or a subset of issuers identified by the Exchange. Similarly, an Exchange could exempt certain issuers from assessments. We believe that Exchange discretion is important with respect to issuer participation so that Exchanges can consider a broad range of user fee and assessment alternatives. We anticipate that Exchanges will consider a variety of factors, such as the projected operating costs of the Exchange, and the number of issuers and consumers who are expected to participate, if and when establishing a fee structure.

Comment: A few commenters expressed concern that user fees or assessments charged in accordance with proposed § 155.160 will be shifted to consumers and providers. These commenters variously recommended that any user fees passed on to the consumer be treated as rate increases, that user fees be reported separately on consumer bills, and that the final rule prohibit direct assessments on consumers. Conversely, several commenters recommended that the Exchange must report on user fees and other assessments; specifically, the amount collected and how the fees were used.

Response: Any user fees or other assessments collected by the Exchange would be reflected in issuers' premiums, consistent with current industry practice, and would thus be considered as part of any rate review conducted by the State. We believe that having issuers report separately any user fees is unnecessary, as we expect that the Exchange will announce user fees in advance of each plan year. With respect to having Exchanges report on user fees, we recognize that transparency is important, but defer to State flexibility to establish a process to notify issuers and report on the assessment of user fees, if this is the approach taken to supporting continued operations. We encourage States to be transparent in this process.

Comment: A handful of commenters on proposed § 155.160 recommended that Exchanges establish uniform user fees for issuers in the individual Exchange and SHOP.

Response: We believe that the decision about whether to charge uniform user fees for issuers in the individual and small group markets is best made by the Exchange, within the context of the local market and the Exchange operational structure. Therefore, we are not limiting Exchange flexibility in this area.

Comment: A few commenters on proposed § 155.160(b) requested that HHS clarify the statement in the proposed rule that no Federal funds will be available to Exchanges after 2014. A few other commenters suggested that Exchanges secure funding from State Medicaid and CHIP agencies to support functions performed on behalf of individuals eligible for Medicaid and CHIP (for example, eligibility screenings and referrals).

Response: The Affordable Care Act specifies that the State ensure that its Exchange is self-sustaining by January 1, 2015. Further, as noted in the Department's State Exchange Implementation Questions and Answers released on November 29, 2011, section 1311 grant funding to establish an Exchange will only be awarded through 2014. This funding is available to States pursuing State-based Exchanges, or preparing to partner with HHS on specific functions, and can be used to fund State activities to establish Exchange functions and operating systems and to test and improve systems and processes over time. In addition, we note that nothing in this final rule prohibits an Exchange from executing agreements with other State agencies to provide funding for certain functions that also assist or support those other State agencies. As noted in the November 29, 2011 Q&A document, HHS has provided additional help to States to build and maintain a shared eligibility service that allows for the Exchange, the Medicaid agency, and the CHIP agency to share common components, technologies, and processes to evaluate applications for insurance affordability programs. This includes enhanced funding under Medicaid and opportunities for other State programs to reuse the information

technology infrastructure without having to contribute funding for development costs related to shared services.

Comment: Several commenters on proposed § 155.160 made recommendations with respect to how user fees or other assessments collected by the Exchange should be incorporated into issuers' medical loss ratios. Some commenters suggested that user fees should be treated as administrative costs, while others recommended that user fees be excluded from the calculation.

Response: We clarify that all calculations and reporting of user fees must be consistent with HHS's medical loss ratio rule, published at 45 CFR 158.

Summary of Regulatory Changes

We are finalizing the provisions in proposed § 155.160, with limited exceptions: first, in revised paragraph (b)(1), we consolidated the description of how Exchange revenue may be generated to simplify the regulatory language. We deleted proposed paragraph (b)(3) and instead clarified in revised paragraph (b)(2) that no Federal grant funding to establish an Exchange will be awarded after January 1, 2015. Finally, we removed the proposal that an Exchange announce user fees in advance of the plan year and instead defer to State notification processes for assessing user fees, if applicable.

3. Subpart C—General Functions of an Exchange

Subpart C outlines the minimum functions of an Exchange, with cross-references in some cases to more detailed standards that are described in subsequent subparts (specifically, subparts D, E, H and K). The minimum functions are designed to provide State flexibility. Uniform standards are established where specified by the statute or where there were compelling practical, efficiency or consumer protection reasons. This subpart also outlines standards for consumer tools and assistance, including the Internet Web site to facilitate consumer comparison of QHPs, the Navigator program, notices, the involvement of agents and brokers, premium payment, and privacy and security.

a. Functions of an Exchange (§ 155.200)

We proposed that an Exchange must perform the minimum functions outlined in subparts E, H, and K related to enrollment, SHOP, and QHP certification, respectively. We also proposed that the Exchange grant certifications of exemptions from the individual responsibility requirement. The proposed rule established that each Exchange would perform eligibility determinations; establish a process for appeals of eligibility determinations; perform functions related to oversight and financial integrity; evaluate quality improvement strategies; and oversee implementation of enrollee satisfaction surveys, assessment and ratings of health care quality and outcomes, information disclosures, and data reporting. We invited comments regarding these and other functions that should be performed by an Exchange.

Comment: Several commenters suggested that HHS establish objective and public performance measures to determine how well an Exchange is executing the minimum functions. Examples provided by commenters include monitoring the percent of consumers enrolled in a QHP in a timely fashion, or monitoring the change in premiums over time in relation to health plans offered outside of an Exchange. Other commenters suggested that performance should be measured against benchmarks that change over time. The commenters further suggested that HHS employ remedies to address any State-based Exchange that is not performing the minimum functions adequately, particularly the processing of applications for advance payments of the premium tax credit and cost-sharing reductions.

Response: Ongoing compliance with regulatory standards is critical to the effective operation of Exchanges and HHS is currently exploring mechanisms for performance measures and oversight tools available under section 1313 of the Affordable Care Act. We also note that the Government Accountability Office is also directed by section 1313(b) of the Affordable Care Act to conduct a study of Exchanges, including a comparison of premiums inside and outside of an Exchange.

Comment: Several commenters urged HHS to clarify that the minimum functions in proposed § 155.200 are a floor and not a ceiling. Similarly, some commenters suggested other minimum functions, including but not limited to: coordinating with public programs and entities; monitoring and addressing adverse selection; creating an ombudsman office to handle complaints and appeals related to Exchange functions; and minimizing wrongful denials of eligibility.

Response: The minimum functions presented in § 155.200 represent a floor that can be exceeded by an Exchange, but we do not believe we need to revise our proposed regulation text for that clarification. In response to the specific functions suggested by commenters, we believe that many of the suggested additional minimum functions are already encompassed in the final rule. For example, subpart D addresses coordination with other public programs and entities as well as the accuracy of eligibility determinations. We also note that subpart K of this part equips the Exchange with the ability to establish certification standards that mitigate adverse selection, while other sections of this subpart outlines various forms of consumer support.

Comment: A number of commenters suggested that the final rule include the standard to fulfill the United States' Trust Responsibility to provide health care for American Indian/Alaska Native individuals regardless of where they reside.

Response: We believe Congress has acknowledged the Federal government's historical and unique legal relationship with Indian tribes by providing additional benefits for American Indians and Alaska Natives to increase access to health care coverage in rural and urban areas. Those benefits include the waiver of cost-sharing amounts and the special enrollment period. We believe that the provisions in this final rule implementing these benefits will supplement the services and benefits that are provided by the Indian Health Service.

Comment: Numerous commenters recommended standards related to the certificates of exemption described in § 155.200(b) of the proposed rule.

Response: As noted in the preamble to the proposed rule, we intend to address certificates of exemption and implement section 1311(d)(4)(H) and 1411 of the Affordable Care Act through future rulemaking.

Comment: Many commenters urged HHS to provide more details on the eligibility appeals minimum function in § 155.200(d) of the proposed rule, and several specifically commented on the need for appeals processes to accommodate limited English proficient individuals.

Response: As noted in the preamble to the proposed rule, we intend to address the content and manner of appeals of individual eligibility determinations in future rulemaking. We have removed this from the list of minimum functions at this time. We note, however, that § 155.355 provides that Exchange eligibility notices include notice of the right to an appeal. In addition, Exchange notices must meet certain minimum standards in § 155.230. Both of these provisions are discussed in more detail in response to comments on those specific sections.

Comment: Many commenters urged HHS to provide more details on the standards for oversight and financial integrity of an Exchange in § 155.200(e) of the proposed rule.

Response: Section 1313 of the Affordable Care Act describes the steps the Secretary may take to oversee Exchanges and ensure their financial integrity, including conducting investigations and annual audits and partially rescinding Federal financial support from a State in which the Exchange has engaged in serious misconduct. We may publish regulations or other guidance in the future describing specific parameters of this oversight.

Comment: Several commenters submitted comments in response to our proposals in § 155.200(f) supporting the use of national quality standards, State flexibility in implementation, reporting quality information to consumers and the evaluation of Exchanges as well as QHPs.

Response: As noted in the preamble to the proposed rule, we intend to address the content and manner of quality reporting under this section in future rulemaking. In addition, the State Exchange Implementation Questions and Answers published by HHS on November 29, 2011 discusses the implementation of the quality rating system for QHPs at question 11.

Comment: Some commenters requested clarification on whether an Exchange is considered a business associate under HIPAA.

Response: In response to commenters' requests for clarification regarding Exchanges and HIPAA, we have added language to section § 155.200 clarifying the relationship between Exchanges and QHP issuers, which are HIPAA covered entities, to help States determine the applicability of HIPAA to their Exchange. The final rule provides States with a breadth of options for designing and implementing Exchange functions and operations. Therefore, it is not possible to state the applicability of the HIPAA Privacy and Security Rules to all Exchanges. We have added § 155.200(e) to clarify that an Exchange is not acting on behalf of a QHP when the Exchange engages in the minimum functions outlined in this final rule.

Because the Exchange, in performing functions under § 155.200, is not operating on behalf of a particular QHP issuer, but rather is acting on its own behalf in performing statutorily-required responsibilities to determine an individual's eligibility for enrollment in a QHP through the Exchange, it is not a HIPAA business associate of the QHP issuer in regard to its performance of these functions. However, an Exchange that chooses to perform functions other than or in addition to those in § 155.200 may be a HIPAA covered entity or business associate. For instance, a State may need to consider whether the Exchange performs eligibility assessments for Medicaid and CHIP, based on MAGI, or conducts eligibility determinations for Medicaid and CHIP as described in § 155.302(b).

As stated in the Exchange establishment proposed rule, each Exchange should engage in an analysis of its functions and operations to determine whether the Exchange is a covered entity or business associate, based on the definitions in 45 CFR 160.103. However, we believe that clarifying our conceptualization of the relationship between an Exchange and QHP issuers will assist Exchanges in their independent evaluation of the applicability of HIPAA. Please see further discussion of privacy and security in § 155.260.

Summary of Regulatory Changes

In the final rule, we made the following changes to § 155.200: we have removed the proposed paragraph (c), and instead included eligibility determinations as a minimum function through reference to subpart D in paragraph (a). We have also removed the proposed paragraph (d) related to appeals of eligibility determinations. In the final rule, paragraphs (c) and (d) now reflect the minimum functions related to oversight/financial integrity and quality activities, respectively. We have added a new paragraph (e) to clarify our intent that in carrying out its responsibilities under subpart C, an Exchange would not be considered to be operating on behalf of a QHP.

b. Partnership

In the Exchange establishment proposed rule, HHS introduced the concept of a Partnership model in which HHS and States work together on the operation of an Exchange. At a State grantee meeting on September 19, 2011, HHS provided additional information regarding the Partnership model.

A Partnership Exchange would be a variation of a Federally-facilitated Exchange. Section 1321(c) of the Affordable Care Act establishes that if a State does not have an approved Exchange, then HHS must establish an Exchange in that State; the statute does not authorize divided authority or responsibility. This means that HHS would have ultimate responsibility for and authority over the Partnership Exchange. In a Partnership Exchange, we intend to provide opportunities for a State to help operate the plan management function, some consumer assistance functions, or both. For successful operation of the Exchange in this model, we expect that States would agree under the terms of section 1311 grants to ensure cooperation from the State's insurance, Medicaid, and CHIP agencies to coordinate business processes, systems, data/information, and enforcement. Under such an arrangement, States could use section 1311 Exchange grant funding to pay for activities related to establishment of these Exchange functions, thereby maintaining existing relationships and allowing for easier transitions to State-based Exchanges in future years if a State elects to pursue Exchange approval.

Comment: Many commenters supported the goal of a Partnership, but voiced concerns about the potentially negative implications for a seamless consumer experience. Commenters urged HHS to ensure that consumers would not be able to differentiate an Exchange operated by a single entity from a Partnership Exchange. Other commenters recommended a highly transparent process so consumers would know where to file appeals and voice complaints and health insurance issuers would know which standards are enforced by which entity. Some commenters raised concerns about separating Exchange functionality at all, and urged HHS not to sacrifice a seamless consumer experience for State flexibility.

Response: A seamless consumer experience is a cornerstone to an effective Exchange, and we plan to structure any Partnership in such a way that will not undermine a smooth process for individuals and employers.

Comment: Several commenters suggested other functions for State involvement in a Partnership instead of the plan management and consumer assistance, in particular suggesting that States perform Medicaid eligibility determinations. Some commenters recommended allowing a State to retain responsibility for making Medicaid eligibility determinations in order to avoid duplicating existing State systems or curtailing traditional State responsibilities. A few commenters suggested that there be a specific process to handle disputes between HHS and Medicaid regarding Medicaid eligibility if States retained that function in a Federally-facilitated Exchange, and one suggested that consumers be held harmless and enrolled in coverage during eligibility disputes. Meanwhile, other commenters urged HHS not to bifurcate eligibility determinations

between Federal and State entities out of concerns about the negative implications for the consumer experience and the complications such bifurcation would create. A small number also suggested that a State with a Federally-facilitated Exchange must accept Federal eligibility determinations.

Other proposed functions for Partnership included: the certificates of exemption described in § 155.200(b), quality rating system, enrollee satisfaction tools, determination of affordability and minimum value of employer-sponsored coverage, or eligibility determinations for advance payments of the premium tax credit. Other commenters suggested areas that should specifically be retained by a State in any circumstance, including State responsibility for overseeing licensure, solvency, market conduct, form approval and other operations of QHPs, overseeing licensed agents, and responding to consumer complaints.

Response: In this final rule, we address leveraging existing State resources and expertise regarding Medicaid in subpart D. Exchange responsibilities related to the quality rating system and enrollee satisfaction survey will be outlined in future rulemaking. In addition, HHS continues to explore how to leverage existing State insurance activities in several areas, including licensure, solvency, and network adequacy. The State Exchange Implementation Questions and Answers published on November 29, 2011 provides additional discussion in this area.

Comment: Some commenters suggested that we allow States to have a variety of options under a Partnership Exchange, while other commenters recommended that a standardized set of limited options would be the most effective way to ensure that a Partnership does not create significant administrative burden.

Response: We recognize that an unlimited number of options for organization of a Federally-facilitated Exchange would be extremely complicated to implement and operate, and believe that the options and flexibilities HHS has laid out will balance flexibility with administrative feasibility.

Comment: Many commenters, citing concerns about accountability, supported the approach of the Partnership being a form of a Federally-facilitated Exchange, while others preferred that States retain ultimate authority in a Partnership. Some of the commenters urged HHS to oppose any Partnership that would confuse or blur lines of authority and responsibility. A few commenters suggested that HHS have readiness assessments or performance metrics to measure how a State will perform, or is performing, a function under Partnership. One commenter suggested that HHS have no role in plan management if a State decides to operate this function, while another voiced concerns about how HHS would enforce certain decisions if a State is operating one or more Exchange functions.

Response: Section 1321(c) of the Affordable Care Act does not contemplate divided authority over an Exchange. In all organizations of a Federally-facilitated Exchange, the Secretary will retain ultimate responsibility and authority over operations and all inherently governmental functions. A State wishing to enter into a Partnership must agree to perform the function(s) within certain parameters, as agreed upon by the State and HHS.

Comment: Some commenters urged HHS not to allow a State to operate only an individual market or SHOP component of an Exchange through a Partnership.

Response: We believe that splitting the SHOP through a Partnership is not a reasonable or feasible option at this time and have not established that as an option.

Comment: Many commenters urged HHS to consult with stakeholders during the development of a Partnership with a given State.

Response: Section 155.105(f) clarifies that the Federally-facilitated Exchange must follow the stakeholder consultation standards in § 155.130. The Federally-facilitated Exchange will consult with a variety of stakeholders to ensure that the needs of the States in which it operates are met.

Comment: A few commenters requested that Tribal governments be eligible to participate in a Partnership.

Response: Currently, only States would be eligible to enter into a Partnership with HHS, as States are the entities designated in the Affordable Care Act as responsible for setting up an Exchange (see discussion of the Exchange establishment proposed rule for more detail (76 FR 41870). However, HHS will continue ongoing tribal consultation to ensure that Exchanges address the needs of tribal populations.

Summary of Regulatory Changes

We did not propose regulations on Partnership and have not added any in this final rule. Rather, further information will be provided in the context of future guidance on the Federally-facilitated Exchange.

c. Consumer Assistance Tools and Programs of an Exchange (§ 155.205)

In proposed § 155.205, we established that the Exchange must provide for the operation of a consumer assistance call center that is accessible via a toll-free telephone number, and outlined capabilities and suggested infrastructure as well as types of information we think will be most critical to consumer experience and informed decision-making. The proposed rule sought comment on ways to streamline and prevent duplication of effort by the Exchange call center and QHP issuers' customer call centers while ensuring that consumers have a variety of ways to learn about their coverage options and receive assistance.

We further proposed that an Exchange must maintain an Internet Web site that contains the following information on each available QHP: the premium and cost sharing information; the summary of benefits under section 2715 of the PHS Act; the identification of the QHP coverage (''metal'') level; the results of the enrollee satisfaction survey; the assigned quality ratings; the medical loss ratio; the transparency of coverage measures reported to the Exchange, and the provider directory.

We noted that we were evaluating the extent to which the Exchange Web site may satisfy the need to provide plan comparison functionality using HealthCare.gov, and invited comment on this issue. We also requested comment on a Web site standard that would allow applicants, enrollees, and individuals assisting them to store and access their personal account information and make changes.

We also proposed that the Exchange Web site be accessible to persons with disabilities and provide meaningful access to persons with limited English proficiency. In addition, we proposed that the Exchange post certain QHP financial information, and that an Exchange establish an electronic calculator to assist individuals in comparing the costs of coverage in available QHPs after the application of any advance payments of the premium tax credit and cost-sharing reductions. We invited comment on the extent to which States would benefit from a model calculator and suggestions on its design.

Finally, we proposed that the Exchange have a consumer assistance function, and that the Exchange conduct outreach and education activities to educate consumers about the Exchange and encourage participation separate

from the implementation of a Navigator program described in § 155.210.

Comment: Several commenters supported the significant flexibility in structuring a call center provided in proposed § 155.205(a). Other commenters suggested that HHS establish more detailed standards such as establishing key areas of competency for a call center service, including being able to provide information about QHPs, the categories of available assistance, and the application process. Some commenters recommended that an Exchange call center address additional topics, ranging from the ability to make appropriate referrals to other sources of information, to the capacity to provide enrollment assistance to hospitals and other providers encountering the uninsured. One commenter said that the call center should be able to respond to online chat.

Response: We accept the recommendation of commenters that Exchange discretion in establishing a call center should be maintained, and therefore have not established additional standards in § 155.205(a) of the final rule. The final rule does not preclude an Exchange from adopting additional standards or implementing the specific suggestions from commenters to provide more robust consumer assistance.

Comment: HHS received many comments regarding an Exchange's ability to make appropriate referrals through the call center in proposed § 155.205(a). Commenters specifically recommended that Exchanges have the capacity to refer consumers to Medicaid, Indian Health Service/Tribal/Urban (I/T/U) providers, Navigators and assisters, oral translation services, and family planning services. A commenter also suggested that the call center be able to appropriately address the special issues facing families with mixed immigration status. Several commenters asked that the call center refer consumers who were ineligible for coverage through the Exchange to safety net health providers and other low-cost, non-Exchange options. Some commenters suggested that the call center be able to appropriately refer discrimination complaints.

Response: We believe § 155.205(a) addresses this issue with the phrase ''address the needs of consumers requesting assistance.'' In the preamble to the proposed rule, we noted that the Exchange call center should be a conduit to services like Navigators and State consumer programs (76 FR 41875). We maintain this expectation under this final rule and note that Exchanges have discretion to establish more specific standards.

Comment: Many commenters recommended that the call center be able to provide oral communication to people with limited English proficiency (LEP), and several suggested standards that assure service to those with hearing disabilities.

Response: We have amended the final rule to apply the meaningful access standards specified in the redesignated § 155.205(c)(1), (c)(2)(i), and (c)(3) to an Exchange call center. HHS will also issue further guidance on language access and such guidance will coordinate our accessibility standards with insurance affordability programs, and across HHS programs, as appropriate, providing more detail regarding literacy levels, language services and access standards.

Comment: HHS received comments about ways a call center can assure quality service, including training on important topics, establishing performance standards on topics like call wait times, abandonment rates, and call return time; or modeling call center performance standards on existing call centers, with 1–800 Medicare and the Michigan Health Insurance Consumer Assistance Program mentioned as positive examples. Commenters also suggested testing the call center with consumer focus groups, developing analytics on call center service issues, and updating an Exchange customer's account with a record of any services provided by call center personnel.

Response: We believe that § 155.205(a) as proposed outlines general standards to address the needs of consumers and we retain this language in the final rule. We did not propose and are not adding specific performance standards for Exchange call centers in this final rule, but we note that in connection with the operation of Federally-facilitated Exchanges, we will take these specific performance recommendations into consideration.

Comment: HHS received many comments on the need to coordinate call center services with other entities. Several commenters recommended that service issues handled by an Exchange call center versus those handled by a QHP issuer call center should be clearly delineated to avoid consumer confusion and unnecessary duplication, a topic for which we requested comment in the proposed rule. One commenter recommended limiting the Exchange call center services to pre-enrollment, leaving QHP issuers to provide customer service for QHP enrollees. Another commenter recommended a ''no wrong number'' approach to customer service, advising that State flexibility would best foster a solution. One commenter spoke of the need to integrate the call center with the Exchange Web site in order to provide personal service without having callers repeat information already entered via an online account. Another commenter asked that HHS clarify the different roles of eligibility workers and the call center.

Response: An Exchange must balance the need to prevent duplication against ensuring that consumers have a variety of ways to learn about their coverage options, an imperative supported by the flexibility in paragraph § 155.200(a). In regard to the differing roles between eligibility workers and the call center, we believe this is an operational issue that each Exchange must address. Thus, we are finalizing this provision as proposed.

Comment: Related to proposed § 155.200(b), many commenters remarked that the Web site www.Healthcare.gov's ''Find Insurance Options'' would work as a model for health plan comparison for the Exchange, though often with the caveat that this feature should be fully integrated into the Exchange Web site. A commenter also noted that Healthcare.gov provides a foundation but would need changes to be used for an Exchange. Some commenters opposed Healthcare.gov as a model because it does not have transactional functionality or a precise premium calculator. Another commenter urged HHS to also consider eHealthInsurance.com and Medicare.gov as models.

Response: HHS considered comments on the appropriateness of Healthcare.gov as a model for presenting comparative plan information, as well as comments suggesting consulting other models such as eHealthInsurance.com and Medicare.gov. We will take these recommendations into account in development of the model Internet Web site template and in future guidance.

Comment: With respect to the preamble discussion related to proposed § 155.205(b), commenters were generally supportive of the concept that Exchange Web sites allow applicants and enrollees to store and access their personal information in an online account or allow eligibility and enrollment application assisters to maintain records of an individual's application process. Some commenters raised privacy and security concerns, and one commenter suggested applying a privacy and security standard like that used by the Financial Industry

Regulatory Authority (FINRA) in its self-regulation of the securities industry, ensuring that actions by authorized representatives are recorded for consumer protection purposes.

Response: We believe that applicants, enrollees, and authorized third party assisters should have access to an online personal account with strong privacy and security protections and will consider these comments when developing the model Internet Web site template and guidance. We encourage Exchanges to consider the benefit of accounts, but are not establishing account functionality as a minimum Exchange Web site standard in this final rule.

Comment: Many commenters supported the proposal in § 155.205(b)(1)(ii) that the Exchange display the summary of benefits and coverage established in section 2715 of the PHS Act. Several noted that the summary of benefits should be searchable, not necessitate additional software to view, and include drug formulary information.

Response: Enrollees, consumers, and other stakeholders need access to a variety of cost and benefit information via the Exchange Web site to make an informed plan selection. Accordingly, we are finalizing the provisions in paragraphs § 155.205(b)(1)(i) and (ii), which direct an Exchange Web site to display premium and cost-sharing information and a summary of benefits and coverage for each QHP. We clarify that paragraphs (b)(1)(i) and (b)(1)(ii) are separate standards because the premium and cost-sharing information needs for an Exchange surpass those included in the summary of benefits and coverage document. We note that paragraph (b)(1)(ii) allows an Exchange the option of collecting the summary of benefits from issuers in a manner supporting a searchable format. The content of the summary of benefits and coverage is outside of the scope of this final rule and refer readers to the Summary of Benefits and Coverage and Uniform Glossary final rule, codified at § 147.200 of this title, published at 77 FR 8668 (Feb. 14, 2012).

Comment: With respect to the provider directory standard in proposed § 155.205(b)(1)(viii), a number of commenters recommended that an Exchange provide an up-to-date consolidated provider directory to enable consumers to see which QHPs a given provider participates in from the Exchange Web site. A few other commenters advised HHS to ensure that the Exchange link to a QHP's Web site provider directory for timely and accurate information. Another commenter asked that the final rule clarify that an online directory meets the standard in paragraph (b)(1)(viii), and that Exchanges do not need to provide paper provider directories.

Response: HHS considered the comments received on the Internet Web site's display of provider directory information. To maintain maximum flexibility for an Exchange, the final rule does not specify whether an Exchange should collect a consolidated provider directory or link to a QHP's Web site in order to meet the standards in paragraph (b)(1)(viii). Additional comments on the provider directories are addressed in § 156.230.

Comment: One commenter indicated that our proposed standard in § 155.205(b)(1)(vi) to display medical loss ratio on the Exchange Web site was inappropriate, comparing it to a manufacturer's cost to produce. Another commenter suggested dropping the proposed MLR display for the individual market Exchange, stating that it was too technical a concept to be useful for consumers.

Response: Issuers already report this data under the Affordable Care Act in accordance with section 2718 of the PHS Act, and displaying the medical loss ratio on the Exchange Web site makes this information accessible to consumers.

Comment: Several commenters noted that an Exchange should track which Web site features were most used, or caused consumers difficulty, in order to continually improve the Web site. Some of these commenters asked that usage information be publicly disclosed.

Response: Statistics on Web site usage may be helpful for Exchange quality assurance, and we will consider these comments when developing best practice guidelines for Exchanges. We make no modifications in the final rule to specifically regulate collection or dissemination of statistics on Web site usage.

Comment: Many commenters supported the proposed § 155.205(b)(2) standards regarding meaningful access to people with disabilities and persons with limited English proficiency, with some suggesting that HHS further clarify that the Web site must be fully accessible, with Web site materials and notices available in alternative formats. One commenter noted that the Exchange calculator and other online tools should be accessible and independently usable as much as possible for people with disabilities. Commenters suggested that all Web site language be at a sixth grade proficiency level. A number of commenters suggested that the Web site be available in Spanish and one or more languages prevalent in the Exchange service area. Many suggested that the Web site clearly display taglines in up to 15 different languages explaining how to access oral translation in those languages. In contrast, one commenter requested that HHS defer to a State on meaningful access standards because a State is best situated to determine local needs. Finally, several commenters suggested that meaningful access standards apply to information presented on the Web site on premiums, premium tax credits, individual responsibility exemptions, and the appeals process.

Response: We have made several changes in this final rule. We added paragraph § 155.205(c) to establish that communications be in plain language to help applicants and enrollees understand the information presented; the definition of ''plain language'' is discussed in § 155.20 of this final rule. We added § 155.205(c)(1) to specify that auxiliary aids and services be provided at no cost to the individual. Provisions on access for those with limited English proficiency are modified in new paragraph § 155.205(c)(2) to include oral translation, written translation, and taglines in non-English languages indicating the availability of language services. Finally, we added paragraph (c)(3) to establish that the Exchange must inform applicants and enrollees of the services in paragraph (1) and (2). We note that in this final rule, at § 155.230(b) and § 156.250, we apply the meaningful access standards to Exchange notices and QHP issuer notices, respectively. We note that the standards in this section do not preempt current guidance issued by the Office of Civil Rights.

We are not adding specific accessibility standards in this final rule, but intend to issue such standards in future guidance, seeking input first from States and other stakeholders about appropriate standards. Such guidance will coordinate our accessibility standards with insurance affordability programs, and across HHS programs, as appropriate, providing more detail regarding literacy levels, language services and access standards.

We retained the standard that Web sites must be accessible to people with disabilities and encourage States to review WCAG 2.0 level AA Web site standards, which have been considered for adoption as Section 508 standards in the recent proposed rule issued by the Architectural and Transportation Barriers Compliance Board (Access Board)76 FR 76640, December 8, 2011). See also Section 5.1.3 of the Guidance for Exchange and Medicaid Information

Technology (IT) Systems 1.0 published in November 2010.[2] We intend to publish future guidance on these standards.

Comment: With respect to the financial information described in proposed § 155.205(b)(3)(i), one commenter sought clarification on what HHS means by licensing costs. Another commenter recommended dropping the proposal in § 155.205(b)(3)(v) that Exchanges display losses due to waste, fraud and abuse, arguing that it would be speculative and inflammatory. Alternatively, several other commenters asked for more detail on Exchange reporting, and asked that HHS direct an Exchange to include all costs, including costs incurred in making a Medicaid eligibility determination, in the administrative cost of the Exchange.

Response: We did not accept the recommendations to establish additional standards and have maintained the proposed policy in the final rule, which is redesignated as subparagraph (b)(6). Section 1311(d)(7) of the Affordable Care Act directs the Exchange Web site to display losses due to waste, fraud and abuse. HHS will consider the request for greater clarity on licensing costs as we develop guidance to interpret and implement this standard.

Comment: Many commenters supported our proposal that the Exchange Web site provide information about Navigators and other assisters in § 155.205(b)(4). Several commenters suggested that HHS explicitly include the display of contact information for other assisters, especially the Exchange call center. Another commenter asked that brokers and agents only be listed if they are also Navigators. One tribal entity remarked that consumer assistance should include services provided by Indian Health Service/Tribal/Urban (I/T/U) organizations.

Response: We maintain the standard in redesignated § 155.205(b)(3) of this final rule. Exchanges have the flexibility to establish additional standards regarding posting information relating to Navigators and other assisters.

Comment: Many commenters were supportive of an Exchange Web site that facilitates a ''one-stop'' eligibility determination as described in § 155.205(b)(5) of the proposed rule. Commenters were supportive of the Web site allowing for enrollment in coverage. Another commenter stated that the Exchange should not be the only access point for coverage, and that HHS should address the need for consumer assistance for Web site-related purchasing mistakes.

Response: Exchange Web sites will not be the only access point for an individual to apply for coverage through the Exchange. Standards for enrollment initiated by an applicant through a non-Exchange Web site are described in an amended § 155.220 and § 156.265, which provide additional details about eligibility determinations and protections against an applicant's personal data from being inappropriately shared with other parties. Applications are also described in § 155.405(c) of the final rule. We have also modified the Web site's function in enrollment in the proposed § 155.205(b)(1), by clarifying in redesignated § 155.205(b)(5) that an Exchange Web site facilitates the selection of a QHP by a qualified individual since enrollment is effectuated by the QHP issuer in a process described in § 156.265(b).

Comment: Many commenters expressed support for a Web site calculator proposed in § 155.205(c) that displays the estimated cost of coverage after the application of any expected advance payments of the premium tax credit and cost-sharing reductions. In general, these commenters urged simplicity and requested no additional calculation from the consumer. Several commenters recommended that HHS provide a national model calculator for efficiency and consistency across Exchanges. One commenter in particular asked that the calculator make cost-sharing reductions available to American Indians/Alaska Natives readily apparent. Another commenter suggested that the Web site provide a standard way for a consumer to take less than the available advance payment of the premium tax credit. A few other commenters suggested that the Web site have decision support to help a consumer see how a change in income would affect advance payments of the premium tax credit and make a plan selection accordingly. Several commenters suggested that the Exchange specify that an ''out-of-pocket'' estimate be part of the Exchange calculator in order to help consumers avoid evaluating cost by premium alone. Finally, one commenter suggested that the calculator account for the variation in cost sharing for ''in-network'' versus ''out-of-network'' services.

Response: We will consider these recommendations as we develop guidance, best practices, and the model Web site template, but we are not finalizing more specific standards for the electronic calculator in this final rule as we are codifying the statutory provision related to the calculator.

Comment: Commenters were generally supportive of Exchanges providing consumer assistance as described in § 155.205(d) of the proposed rule. Many asked that an Exchange complete a consumer needs assessment before designing its consumer assistance program. HHS received many comments on the need to conduct outreach and education for hard to reach populations described in proposed § 155.205(e). Many commenters remarked that assistance should be able to serve those with disabilities or limited English proficiency, suggesting standards for consumer assistance such as oral translation for all limited English proficient individuals, or simply that such services be culturally and linguistically appropriate. Some commented that consumer assistance workers should be knowledgeable of the Indian Health System. One commenter remarked that consumer assistance should be accessible across multiple channels, including Web site, telephone, and in-person. Several commenters remarked on the need for in-person assistance, with one commenter suggesting the Internal Revenue Service's Volunteer Income Tax Assistance Program as a model, another commenter recommending agents and brokers for consumer assistance, and a third suggesting that assistance be provided as much as possible by nonprofit organizations. Others suggested that an outreach program be coordinated with public programs because of the likely overlap in eligibility, or with providers like Federally Qualified Health Centers and essential community providers. Other commenters pointed to existing enrollment campaigns for lessons learned, such as the need to build in time to ''ramp up'' an enrollment campaign.

Response: We will consider comments we received on consumer assistance in § 155.205(d) in the development of guidance. In this final rule, we maintain this provision as proposed and believe that it provides sufficient discretion to further develop the consumer assistance function. We have modified § 155.205(e) in this final rule to direct Exchanges to provide education regarding insurance affordability programs to ensure coordination with public programs. HHS received many helpful comments on how to ensure effective consumer

[2] Guidance for Exchange and Medicaid Information Technology (IT) Systems 1.0 published in November 2010: *http://cciio.cms.gov/resources/files/joint_cms_ociio_guidance.pdf.*

assistance and outreach and will consider these as we develop guidance.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.205 of the proposed rule, with the following modifications: we renumbered proposed paragraphs (b)(3) through (b)(6) as (b)(2) to (b)(5) in the final rule. We clarified in paragraph (b)(5) of this final rule that a qualified individual may select a QHP on the Exchange Web site to initiate the enrollment process, rather than completing the entirety of the enrollment process on the Web site. We moved the standard regarding the calculator to paragraph (b)(6) of this final rule. We redesignated paragraph (c)(1) and clarified standards for persons with disabilities, including the provision of auxiliary aids and services at no cost to the individual and that Exchange Web sites must be accessible. We added paragraph (c)(2) to outline standards for limited English proficient persons, including that oral translation be available, written translation be available, and that the availability of language services be displayed with taglines written in each respective language, and in paragraph (c)(3) that individuals must be made aware of the availability of these services. Finally, we made several minor technical and non-substantive changes.

d. Navigator Program Standards (§ 155.210)

In § 155.210, we proposed Navigator program standards for both the individual market Exchange and SHOP. We first proposed that Exchanges must award grant funds to public or private entities or individuals to serve as Navigators, and described the eligibility standards for and the types of entities to which the Exchange may award Navigator grants. We also identified the minimum duties of Navigators, including standards for the information and services provided by Navigators. We sought comment on how best to ensure that the information provided by Navigators is accurate and complete and whether HHS should identify additional standards for Navigators in future guidance.

We further proposed that a Navigator must meet any licensing, certification or other standards prescribed by the State or Exchange, as appropriate, and may not have a conflict of interest during the term as Navigator. We sought comment on whether we should propose additional standards on Exchanges to make determinations regarding conflicts of interest.

In addition, we proposed that the Exchange include at least two types of Navigators from the list of eligible entities included in the Affordable Care Act. We sought comment as to whether we should ensure that at least one community and consumer-focused non-profit organization be designated as a Navigator by an Exchange, or whether we should provide that Navigator grantees reflect a cross-section of stakeholders.

We also proposed to codify the statutory prohibitions on Navigator conduct in the Exchange, specifically that health insurance issuers are prohibited from serving as Navigators and that Navigators must not receive any compensation from any health insurance issuer in connection with the enrollment of any qualified individuals or qualified employees in a QHP. We sought comment on this issue and whether there are ways to manage any potential conflicts of interest that might arise.

Finally, we proposed to codify the statutory restriction that the Exchange cannot support the Navigator program with Federal funds received by the State for the establishment of Exchanges. For a more detailed discussion of how this statutory prohibition applies in States where Navigators address Medicaid and CHIP administrative functions, please refer to the preamble of the Exchange establishment proposed rule (76 FR 41878). We also noted that we were considering a standard that the Navigator program be operational with services available to consumers no later than the first day of the initial open enrollment period.

General Standards

Comment: Regarding proposed § 155.210(a), several commenters had specific recommendations regarding the types of and content of contractual agreements that should exist between Navigators and Exchanges.

Response: The final rule does not specify the type of or contents of the contractual agreements between Exchanges and Navigators, other than codifying the statutory provision that Navigators receive grants. Exchanges can design the grant agreements as they deem appropriate so long as they ensure that Navigators are completing, at least, the minimum duties outlined in § 155.210(e) of the final rule.

Comment: Several commenters recommended additional standards for Navigator programs established under proposed § 155.210(a), including a needs assessment of the population in the geographic areas in which Navigators will serve consumers and an ongoing evaluation system to gauge Navigator performance.

Response: While a needs assessment is likely to yield useful information in developing the Navigator program, we do not accept the commenters' suggestion that Navigator programs conduct such assessments. We note that many States have already begun research on the needs of the populations an Exchange could serve. To the extent that needs assessments undertaken as part of Exchange establishment and planning do not inform which types of Navigators to select and how Navigators can best serve potential Exchange enrollees, we encourage States to conduct them. But the final rule does not direct States to conduct additional research. Additionally, we strongly encourage Exchanges to implement regular reviews and assessments of their Navigators.

Comment: A significant number of commenters expressed the importance of mitigating Navigator conflict of interest and of ensuring Navigator accountability. Many commenters asked that HHS issue specific conflict of interest standards that would apply to all entities interested in serving as Navigators, and some made specific recommendations regarding what should be included in such standards. Several commenters, including consumer and patient advocacy groups and State agencies, also requested that we define ''conflict of interest'' as used in § 155.210(b)(1)(iv) of the proposed rule, while another commenter suggested that States should have the flexibility to determine if a conflict of interest exists for Navigators.

Response: The final rule contains restrictions on Navigator conduct that are intended to eliminate possible sources of conflicts of interest. However, the baseline standards that we have specified will likely not be sufficient to comprise a robust set of conflict of interest standards in all Exchanges. As such, § 155.210(b)(1) of the final rule establishes that Exchanges develop and disseminate a set of conflict of interest standards to ensure appropriate integrity of Navigators. Exchanges will be best-equipped to determine what additional conflict of interest standards are appropriate for their markets, and we strongly urge Exchanges to develop standards that are sufficient to help ensure that consumers receive accurate and unbiased information at all times from all Navigators. We also clarify here that ''conflict of interest,'' as used in § 155.210(c)(1)(iv) of the final rule, means that a Navigator has a private or personal interest sufficient to influence, or appear to influence, the objective

exercise of his or her official duties; for purposes of this rule, it includes the conflict of interest standards developed by each Exchange.

We urge Exchanges to develop conflict of interest standards that include, but are not limited to, areas such as financial considerations; non-financial considerations; the impact of a family member's employment or activities with other potentially conflicted entities; Navigator disclosures regarding existing financial and non-financial relationships with other entities; Exchange monitoring of Navigator-based enrollment patterns; legal and financial recourses for consumers that have been adversely affected by a Navigator with a conflict of interest; and applicable civil and criminal penalties for Navigators that act in a manner inconsistent with the conflict of interest standards set forth by the Exchange. Additionally, we will be releasing model conflict of interest standards in forthcoming guidance.

Comment: We requested comment on standards related to training in the proposed rule and received a large number of responses on this issue. Several commenters suggested that HHS establish minimum standards for Navigator training, including templates for the format and content of Navigator training materials. Some commenters suggested that Navigators be trained to specifically serve the needs of varying groups, including but not limited to: low-income individuals; limited English proficient individuals; tribal organizations; individuals with disabilities; and individuals with mental health or substance abuse needs. Other commenters urged HHS to defer to States in relation to Navigator training and standards beyond those established in the proposed rule.

Response: Due in part to the sensitivity of information that will be available to Navigators, newly added § 155.210(b)(2) of the final rule directs Exchanges to establish training standards that apply to all persons performing Navigator duties under the terms of a Navigator grant, including both paid and unpaid staff of entities serving as Navigators. We plan to issue training model standards in forthcoming guidance to supplement, not replace, the need for Navigator applicants to demonstrate that they can carry out the minimum duties of a Navigator as listed in § 155.210(e) of the final rule. We encourage Exchanges to conduct ongoing and recurring training for Navigators.

Comment: One comment from a consumer advocacy organization requested that HHS specifically indicate that the Gramm-Leach-Bliley Act (Pub. L. 106–102) does not apply to the Navigator program as Navigators will not be selling insurance.

Response: The Gramm-Leach-Bliley Act (GLBA) is intended to enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, insurance companies, and other financial service providers, and for other purposes. To the extent a Navigator is not licensed to sell insurance, we believe the GLBA would not apply. The GLBA will apply to agents and brokers as it currently does, including agents and brokers that choose to serve as Navigators. However, other Navigator grantees will not be affected. Navigators must meet other training, conflict of interest, and privacy and security standards established by the Exchange.

Comment: We received many comments expressing support for a standard that Navigator programs be operational with services available to consumers no later than the first day of the initial open enrollment period. Some commenters noted that while they support the proposed start date, they prefer an earlier operational start date.

Response: We have not directed Navigator programs to be operational by the first day of the initial open enrollment period. However, we encourage Navigator programs to be operational with services available to consumers by October 1, 2013, for State-based Exchanges that are approved or conditionally approved by January 1, 2013, or the start of any annual open enrollment period in subsequent years for State-based Exchanges certified after January 1, 2013.

Entities Eligible to be a Navigator

Comment: Many commenters proposed that States, Exchanges, or HHS should set appropriate certification or licensing standards for Navigators. A few commenters proposed that HHS set a broad range of certification or licensing standards that States or Exchanges could tailor to meet their own needs, while others suggested specific programs upon which Exchanges could model Navigator certification standards, such as the Medicare State Health Insurance Assistance Programs, ombudsman programs, area agencies on aging, and Promotoras, a community health worker model that has been adopted into many Latino communities in the United States.

Response: We understand and appreciate the concerns of commenters that recommended certification or licensure standards for Navigators; we have finalized in this rule a primary role for Exchanges and States in the creation, development and enforcement of such standards. We encourage Exchanges to set certification or licensing standards for Navigators in accordance with the guidelines set forth in this final rule and any State law(s) that may apply. However, without some minimum standards, significant variability may develop that could put consumers at a disadvantage. Therefore, HHS has added § 155.210(b)(2) of the final rule to indicate that Exchanges must develop a set of training standards to ensure Navigator competency in the needs of underserved and vulnerable populations, eligibility and enrollment procedures, and the range of public programs and QHP options available through the Exchange. Additionally, given the policy set forth in § 155.210(c)(1)(v) that Navigators comply with the privacy and security standards adopted by the Exchanges under § 155.260, the training standards must also ensure that Navigators are trained in the proper handling of tax data and other personal information. HHS also plans to issue additional guidance on the model standards for Navigator training and best practices for certification or licensure standards.

Comment: A majority of commenters proposed that Navigators should not have to hold an agent or broker license or errors and omissions liability coverage in order to be certified or licensed as a Navigator. Conversely, a small number of commenters suggested that Navigators hold an agent or broker license as well as errors and omissions coverage and that Navigators should be subject to the same licensing and education standards established for agents and brokers.

Response: We accept the commenters' suggestion that States and Exchanges should not be able to stipulate that Navigators hold an agent or broker license, and we clarify that States or Exchanges are prohibited from adopting such a standard, including errors and omissions coverage. ''Agent or broker'' is defined in § 155.20 as ''a person or entity licensed by the State as an agent, broker, or insurance producer.'' Thus, establishing licensure standards for Navigators would mean that all Navigators would be agents and brokers, and would violate the standard set forth § 155.210(c)(2) of the final rule that at least two types of entities must serve as Navigators. Additionally, we do not think that holding an agent or broker license is necessary or sufficient to perform the duties of a Navigator as these licenses generally do not address

training, among other things, about public coverage options.

Comment: Several commenters addressed the need for Navigators to have expertise in serving American Indian/Alaska Native communities and on the ability of Navigators to adequately address the needs of American Indians/Alaska Natives. In addition, a few commenters suggested we modify the language proposed in § 155.210(b)(1)(iii) such that Navigators serving tribal communities should be exempt from any State licensing or certification standards, as well as from conflict of interest standards.

Response: Exchanges that include one or more Federally-recognized tribes within their geographic area must engage in regular and meaningful consultation and collaboration with tribes in accordance with § 155.130(f) of this final rule. In section 155.210(c)(2), we have identified Tribes, Tribal organizations, and urban Indian organizations as eligible entities to serve as Navigators. Development of the Navigator program should be an important element of Exchanges' consultation with Tribal governments. The Navigator program will help ensure that American Indians/Alaska Natives participate in Exchanges.

Comment: Commenters recommended that when the geographic area of an Exchange includes an Indian Tribe, tribal organization, or Urban Indian organization, that at least one of these organizations must be included as a Navigator within this Exchange. Another commenter recommended that HHS include directives to Navigator programs and contractors to provide resources directly to Tribes so they can conduct Navigator tasks within their own communities.

Response: Although Indian Tribes, tribal organizations, or Urban Indian organizations are listed in § 155.205(c)(2)(viii) as potential Navigators, we believe that the Exchange should have flexibility regarding the granting of Navigator awards. However, as noted previously, development of the Navigator program should be a critical element of an Exchange's consultation with tribal governments, and tribal governments should have the opportunity to provide early input on the development of the Navigator program.

Comment: Several commenters articulated the need for Navigators to be non-discriminatory in performing their duties. Commenters recommended that Navigators should comply with the non-discrimination standards that apply to the Exchange as a whole.

Response: We clarify that because Navigators are third parties under agreement (that is, the grant agreement) with the Exchange, the non-discrimination standards that apply to Exchanges in § 155.120(c) will also apply to entities seeking to become Navigators.

Comment: Regarding § 155.205(b)(2), a majority of commenters supported the provision suggested in the proposed rule to establish that at least one of the two types of entities eligible to serve as Navigators must be a community or consumer-focused non-profit entity (76 FR 41877). Several commenters recommended expanding the list of categories to include additional entities. A small number of commenters thought States should have sole discretion over the determination of which entities may serve as Navigators. One commenter favored allowing States to determine the need for a Navigator program; another recommended using licensed insurance professionals to facilitate enrollment; and a small number stated that the standard that two types of entities must be Navigators was unnecessary and counterproductive.

Response: We accept the commenters' suggestion that at least one entity that serves as a Navigator should be a community or consumer-focused non-profit, and have amended § 155.210(c)(2) to convey this policy. The categories listed in the final rule in § 155.210(c)(2) represent a broad spectrum of organizations, but are not meant to be an exhaustive list of potential Navigators. As stated in § 155.210(c)(2)(viii), other public or private entities that meet the standards of the Navigator program may be eligible to receive a Navigator grant. When establishing a Navigator program, Exchanges should plan to have a sufficient number of Navigators available to assist qualified individuals and employers from various geographic areas and with varying needs who wish to enroll in QHPs within their State.

Comment: One comment stated that a Navigator should never be an individual person, but instead a verifiable and appropriately regulated entity or institution.

Response: We believe that the standard to meet licensure and certification standards in § 155.210(c), and the prohibition against health insurance issuers, and those who receive any consideration directly or indirectly from any health insurance issuer in connection with the enrollment in the Exchange, from receiving Navigator grants in § 155.210(d) will serve as sufficient regulation against fraud by individuals or organizations who qualify to be Navigators.

Prohibitions on Navigator Conduct

Comment: Many commenters discussed the impact that Navigator compensation, or ''consideration'' as used in § 155.210(c)(2) of proposed rule, would have on a Navigator's obligation to provide impartial assistance and avoid conflicts of interest. The majority of these commenters recommended that Navigators be prohibited from receiving compensation from health insurance issuers for enrolling individuals in plans outside of the Exchange, while some commenters expressed support for the compensation restrictions as proposed. Several commenters requested that a prohibition on enrollment-based compensation from a health issuer not prohibit Navigator programs from utilizing Medicaid or CHIP funds for appropriate Navigator activities. Some commenters also recommended that such a prohibition not preclude Navigators from receiving grants from health insurance issuers for activities unrelated to enrolling individuals in plans inside of the Exchange. Many commenters requested clarification of the term ''consideration.''

Response: Prohibiting Navigators from receiving compensation from health insurance issuers for enrolling individuals in health insurance plans is an important way to mitigate potential conflict of interest, and we have amended the final rule in § 155.210(d)(4) to establish this prohibition. Permitting Navigators to receive such compensation would introduce a financial conflict of interest which would run counter to the focus of the Navigator program as a consumer-centered assistance resource. We clarify that this prohibition applies to Navigators broadly, including staff of an entity serving as a Navigator or entities that serve as Navigators for one Exchange while simultaneously serving in another capacity for another Exchange. Additionally, we clarify that this prohibition does not preclude Navigators from receiving grants from the Exchange that are funded through the collection of user fees.

We note that the final rule does not inherently prohibit Navigators from receiving grants and other consideration from health insurance issuers for activities unrelated to enrollment into health plans, although we remain concerned that such relationships—financial and otherwise—may present a significant conflict of interest for Navigators. We urge Exchanges to consider the ramifications of such

relationships when developing conflict of interest standards for their Navigator programs.

We also clarify that ''consideration,'' as used in § 155.210(d)(4) of the final rule, should be interpreted to both mean financial compensation—including monetary or in-kind of any type, including grants—as well as any other type of influence a health insurance issuer could use, including but not limited to things such as gifts and free travel, which may result in steering individuals to particular QHPs offered in the Exchange or plans outside of the Exchange.

Duties of a Navigator

Comment: Many commenters supported the Navigator duties proposed in § 155.210(d), and some suggested that the duty to ''maintain expertise in eligibility, enrollment, and program specifications'' should include knowledge about Exchanges, Medicaid, CHIP, other private and public health insurance programs, appeals, and rules related to cost-sharing. Other commenters recommended other specific minimum duties for Navigators, including providing information about total plan costs, assisting consumers with applying for advance payments of premium tax credit and other cost-sharing reductions, and making consumers aware of the tax implications of their enrollment decisions.

Response: The final rule maintains most of the duties set forth in the proposed rule, except as re-assigned as § 155.210(e) and reflecting edited language in § 155.210(e)(3). The change in § 155.210(e)(3) is a technical correction to ensure consistency with our clarification in § 155.205(b)(7). Similarly, a Navigator facilitating a QHP selection for a consumer initiates the enrollment process, which is then conducted by the Exchange. Section 155.400(a)(2) of this final rule describes the subsequent step in the enrollment process, and directs Exchanges to transmit the QHP selection to the appropriate QHP issuer.

We believe that Navigators should make consumers aware of the tax implications of their enrollment decisions, and consider this to be included in § 155.210(e)(1) of the final rule. Navigators should also provide information about the costs of coverage and assist consumers with applying for advanced payments of the premium tax credit and cost-sharing reductions, and we clarify that § 155.210(e)(2) and § 155.210(e)(3) of the final rule are intended to include such activities. We also clarify that such assistance could result in an individual receiving an eligibility determination for other insurance affordability programs. Additionally, we note that Exchanges can establish additional minimum Navigator duties and encourage Exchanges to determine whether additional Navigator duties may be appropriate.

Comment: A significant number of commenters recommended that Navigators be accessible to all consumers, including those with disabilities, and that all information provided under § 155.210(d)(5) of the proposed rule by Navigators be provided orally as well as in writing.

Response: Navigators need to be accessible to individuals with disabilities, and redesignated § 155.210(e)(5) of the final rule establishes that Navigators must ensure accessibility and usability for individuals with disabilities, which we believe includes accessibility by individuals with hearing or visual impairments and using enrollment tools, written in plain language, that are easily accessible by consumers. We believe this provision will help ensure that Navigators minimize obstacles to access for all potential enrollees and remain accessible to consumers. Exchanges have the flexibility to develop materials or to assign the responsibility to Navigators.

Comment: Many commenters expressed the need for Navigators to be linguistically and culturally competent, as described in § 155.210(d)(5) of the proposed rule, and a significant number recommended training in this area. Commenters had numerous specific recommendations regarding how Navigators would be able to best accomplish this duty, and other commenters wanted additional clarity regarding this standard. Some commenters recommended that Navigator programs select diverse Navigators as a method of reinforcing linguistic and cultural competence. One commenter suggested that having a consumer's family members or friends serve as interpreters should not be permitted to fulfill the obligation to provide culturally and linguistic appropriate services.

Response: Redesignated § 155.210(e)(5) establishes that Navigators must provide information in a way that is culturally and linguistically accessible to ensure that as many consumers as possible can benefit from Navigator programs. The linguistic and cultural accessibility standard applies broadly across the duties of a Navigator, including public education and outreach activities. We encourage Exchanges to undertake cultural and linguistic analysis of the needs of the populations they intend to serve and to develop training programs that ensure Navigators can meet the needs of such populations. We note that we do not believe that this standard can be met by simply having consumers' family members or friends serve as interpreters. As previously stated, future guidance will set forth model standards related to linguistic and cultural competency.

Comment: Regarding the duties of a Navigator outlined in § 155.210(d) of the proposed rule, several commenters expressed the importance of data and the use of information technology for Navigator programs, including Navigator collection of data and narratives regarding consumer experiences. Some consumers also stated that Navigators should collaborate with other programs and entities, including other consumer assistance programs and State governments, so that all groups could mutually share information.

Response: The final rule does not establish that Navigators or the Navigator program must collect data or to ensure compatibility with existing information systems. However, Exchanges have the flexibility to use such tools to ensure that Navigators and Exchanges are best serving consumers.

Funding for Navigators

Comment: One commenter recommended that Navigator compensation by an Exchange described in § 155.210(e) of the proposed rule be only in the form of block grants, while another commenter recommended that Navigator grants include distribution on a per capita basis for enrolling individuals in QHPs offered through the Exchange.

Response: We do not outline a specific compensation structure for Navigators, and we maintain the proposed approach to funding in § 155.210(f) of the final rule. This approach does not alter section 1311(i)(6) of the Affordable Care Act that establishes that all funds for Navigator grants come from the operational funds of the Exchange. We note, however, that operational funds of the Exchange may be revenue received by the Exchange through user fees or other revenue sources, so long as the Exchange is self-sustaining. We anticipate that there may be public or private grants available to support certain Exchange functions, such as education and outreach; once received for the purposes of funding Exchange operations, these funds would be operational funds.

Comment: We received numerous comments suggesting that we monitor Navigator programs to ensure that they have sufficient funding under proposed § 155.210(e) to meet the needs of all potential enrollees, and several commenters recommended that we issue guidance on minimum funding levels needed to operate sustainable Navigator programs.

Response: While States and Exchanges should ensure that Navigator programs have sufficient funds to ensure that all potential enrollees are capable of being assisted and guided in eligibility and decision-making for coverage in the Exchanges, we believe that minimum funding level for Navigator program needs will vary by State and by populations and therefore do not establish a minimum in § 155.210(f) of the final rule.

Comment: We received several comments regarding the use of Medicaid or CHIP funds when Navigators perform administrative functions for those programs. The majority of commenters, primarily consumer and patient advocacy groups, were supportive of using Federal Medicaid and CHIP funds for this purpose, while a small minority was opposed to such an approach. One commenter recommended that Navigators not perform Medicaid or CHIP administrative functions, stating that these activities are the purview of the State Medicaid program.

Response: We continue to support the position that if a State chooses to permit Navigators to perform or assist with Medicaid and CHIP administrative functions, Medicaid or CHIP agencies may claim Federal funding for a share of expenditures incurred for such activities. A more detailed discussion of this position is in the proposed rule (76 FR 41878).

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.210 of the proposed rule, with the following modifications. In new paragraph (b), we provide that an Exchange must develop and publicly disseminate conflict of interest and training standards for all entities that serve as Navigators. In paragraph (c)(1)(v), we apply the privacy and security standards adopted by the Exchange, as established in § 155.260, to Navigators. In paragraph (c)(2), we provided that at least one entity serving as a Navigator must be a community and consumer-focused non-profit. We clarified in paragraphs (d)(2) and (d)(3) that subsidiaries of health insurance issuers and associations that include members of or lobby on behalf of the insurance industry are prohibited from serving as Navigators. In paragraph (d)(4) we clarified that Navigators may not receive compensation from a health insurance issuer in connection with the enrollment of individuals or employees in any health plan, including both QHPs and non-QHPs. Finally, in paragraph (e)(3) we clarified that Navigators must assist consumers in selecting a QHP, thereby initiating the enrollment process.

e. Ability of States to Permit Agents and Brokers to Assist Qualified Individuals, Qualified Employers, or Qualified Employees Enrolling in QHPs (§ 155.220)

Based on comments and feedback to the proposed rule, we are revising the rule to include paragraph (a)(3) of this section as an interim final provision, and we are seeking comments on it.

In § 155.220, we proposed to codify section 1312(e) of the Affordable Care Act that gives States the option to permit agents or brokers to enroll individuals and employers in QHPs. To ensure that individuals and small groups have access to information about agents and brokers should they wish to use one, we proposed to permit an Exchange to display information about agents and brokers on its Web site or in other publicly available materials. Additionally, recognizing that an Exchange may wish to work with web-based entities and other entities with experience in health plan enrollment, we sought comment on the functions that such entities could perform, the potential scope of how these entities would interact with the Exchange, and the standards that should apply to an entity performing functions in place of, or on behalf of, an Exchange while acknowledging and meeting the statutory limitation that premium tax credits and cost-sharing reductions be limited to enrollment through the Exchange. We also sought comment on the practical implications, costs, and benefits to an Exchange that coordinates with such entities, as well as any implications for security or privacy of such an arrangement.

Comment: A number of commenters sought clarification on whether and how the involvement of agents and brokers described in proposed § 155.220 may serve as Navigators under § 155.210. Many commenters sought further clarification as to the distinction between the role of agents or brokers and the role of Navigators in the Exchange.

Response: In general, the responsibilities of a Navigator differ from the activities that an agent or broker. For example, the duties of a Navigator described under § 155.210(e) of the final rule include providing information regarding various health programs, beyond private health insurance plans, and providing information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange. Moreover, any individual or entity serving as a Navigator may not be compensated for enrolling individuals in QHPs or health plans outside of the Exchange; as such, an agent or broker serving as a Navigator would not be permitted to receive compensation from a health insurance issuer for enrolling individuals in particular health plans. That said, nothing precludes an Exchange's Navigator program from including agents and brokers, subject to the conditions of § 155.210.

Comment: Several commenters expressed support for the proposed § 155.220(a) and the level of flexibility it affords State Exchanges to determine the role of agents and brokers and web-based entities in the Exchange marketplace. Several commenters specifically expressed support for the manner in which the accompanying preamble to the proposed rule described the Exchange as accountable for the actions of web-based entities.

Response: We accept the recommendation that Exchanges have the flexibility to determine the role of agents and brokers, including web-based entities, in their marketplaces. We have retained the language in § 155.220(a), which codifies the statutory flexibility that States may determine whether agents and brokers may enroll individuals, employers and employees in QHPs and provide assistance to qualified individuals applying for financial assistance.

Comment: HHS received several comments urging us to prohibit agents and brokers, including web-based brokers, from performing eligibility determinations.

Response: The Exchange must perform eligibility determinations, subject to the standards and flexibility outlined in subpart D of this final rule. We note that an individual cannot enroll in a QHP through the Exchange, nor can a QHP issuer enroll a qualified individual in a QHP through the Exchange, unless such individual completes the single streamlined application to determine eligibility as described in § 155.405 and is determined eligible. We have clarified in § 156.265(b)(1) that that enrollment by QHP issuer may be considered ''enrollment through the Exchange'' only after the Exchange notifies the QHP

issuer that the individual has received an eligibility determination, the individual is qualified to enroll in a QHP through the Exchange, and the Exchange transmits enrollment information to the QHP issuer consistent with § 155.400(a). In § 155.220(c)(1), we also specify that an individual can be enrolled in a QHP through the Exchange with the assistance of an agent or broker only if the agent or broker ensures that the individual completes the application and eligibility verification process through the Exchange Web site. We acknowledge and clarify that nothing in this final rule prohibits a QHP issuer from selling QHP coverage directly or through an agent or broker, so long as the standards of § 156.255(b) are met; however, such sales and enrollment are not ''enrollment through the Exchange'' and such enrollees are not eligible for the benefits that are tied to enrollment through the Exchange.

Comment: With respect to proposed § 155.220(a), several commenters sought clarification of the role agents and brokers in enrolling individuals in QHPs. Several commenters urged us to strengthen the role of agents and brokers in the Exchange by further clarifying their ability to participate in the Exchange marketplace. With respect to the preamble discussion of web-based entities, several commenters urged HHS to permit web-based entities in particular to enroll individuals eligible for advance payments of the premium tax credit and cost-sharing reductions in QHPs so that such individuals may have access to the same avenues for QHP enrollment as those individuals who do not receive financial assistance.

Response: We accept the recommendation that we provide Exchanges with discretion to leverage the market presence of agents and brokers, including web-based entities that are licensed by the State (web-brokers), to draw consumers to the Exchange and to QHPs. We have amended § 155.220 to include minimum standards for the process by which an agent or broker may help enroll an individual in a QHP in a manner that constitutes enrollment through the Exchange. This is intended to include traditional agents and brokers, as well as web-brokers. This process must include the completion by the individual of a single streamlined application to determine eligibility through the Exchange's Web site, as described in § 155.405; the transmission of enrollment information by the Exchange to the QHP issuer to allow the issuer to effectuate enrollment of qualified individuals in the QHP; and any standards set forth in an agreement between the agent or broker and the Exchange. We note that there may be various means a State may choose to integrate agents, brokers and web-brokers consistent with the standards described in this section for enrollment through the Exchange. Agents and brokers may assist individuals enrolling directly through the Exchange Web site and may serve as Navigators consistent with standards described in § 155.210. We also afford Exchanges discretion to allow agents and brokers to use their own Web sites to assist individuals in completing the QHP selection process, as long as such a Web site conforms to the standards identified in § 155.220(c)(3). While Exchanges that pursue this option would be able to leverage the market presence of web-brokers in drawing consumers to the Exchange and QHPs, we note that the Exchanges will also have to share data and coordinate closely with such entities.

Comment: With respect to proposed § 155.220(a), many commenters urged us to set standards around the use of agents and brokers in order to ensure certain consumer protections. These suggestions included having Exchanges to monitor and oversee all agents and brokers enrolling individuals and small groups in QHPs; establishing provisions to mitigate agents' and brokers' incentives to steer consumers to enroll in certain QHPs or to non-QHPs; setting uniform commissions for agents and brokers or establishing that issuers must compensate agents and brokers the same amount for Exchange and non-Exchange plans; prohibiting commissions for agents and brokers in the Exchange altogether; establishing certain disclosures by agents and brokers, including disclosure of their commission and whether or not the agent or broker has been the subject of any sanctions; applying privacy and confidentiality standards to agents and brokers; prohibiting Exchanges from directing individuals or small groups to enroll only through an agent or broker; prohibiting advertising by agents or brokers; or prohibiting agents and brokers from the Exchange altogether.

A number of commenters also expressed concern regarding the role of third-party web-based entities enrolling individuals in QHPs. Several commenters emphasized that such external entities should be held to the same standards as the Exchange; should not be permitted to perform eligibility determinations; or should be held to certain consumer protection standards to prevent steering.

Response: We recognize the importance of consumer protections with respect to agents and broker interactions. We also recognize the States' role in licensing and overseeing agents and brokers and have allowed States to determine which standards would apply to agents and brokers acting in the Exchange, if the State chooses to permit agents and brokers to enroll individuals and small groups in QHPs through the Exchange. In order to address commenters' concerns while maintaining the State's primary role in overseeing agents and brokers, we have added paragraph (d) to ensure that agents and brokers must comply with an agreement with the Exchange under which the agent or broker would comply with the Exchange's privacy and security standards that are adopted consistent with § 155.260 and § 155.270. We have also added paragraph (e) to ensure that agents and brokers comply with applicable State law.

We also recognize that the role of web-brokers may evolve upon implementation of Exchanges, and that Exchanges may seek to involve web-brokers in the enrollment process using a variety of technologies. We have set forth standards in this rule to ensure that consumers enjoy a seamless experience with appropriate consumer protections if an Exchange chooses to allow web-brokers to participate in Exchange enrollment activities. In order to address commenters' particular concerns around the role of web-based entities, we note that eligibility determinations must be conducted by the Exchange and enrollment information must be transmitted to the QHP issuer by the Exchange. We have added paragraph (c)(3) to § 155.220 to ensure that Web sites used by agents or brokers to enroll individuals in a manner that constitutes enrollment through the Exchange provide consumers with access to the same information as they would if they used the Exchange Web site instead. Based on several commenters' suggestion that we address agents' and brokers' ability to steer or incentivize consumers to enroll in certain QHPs, and commenters' general concern about the fact that the existence of such Web sites may confuse consumers, we have inserted standards under paragraph (c)(3) of this section to prevent such web-brokers from providing financial incentives and to establish that such Web sites must allow consumers to withdraw from the web-broker's process and use the Exchange Web site instead at any time. Furthermore, the web-brokers would also be subject to the standards inserted

under paragraph (d) and (e) regarding compliance with an agreement with the Exchange and State law, respectively.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.220 of the proposed rule, with several modifications. In the new paragraph (a)(2), we clarify that agents and brokers may enroll qualified individuals in a QHP in a manner that constitutes enrollment through the Exchange. In new paragraph (a)(3), we clarify that agents and brokers may assist individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs. As noted elsewhere in this rule, paragraph (a)(3) is being published as interim. We outline the parameters of what is considered enrollment through the Exchange in the newly added paragraph (c), including that an agent or broker must ensure that an individual completes the eligibility verification process through the Exchange and that the Exchange transmits enrollment information to the QHP issuer consistent with § 155.400(a). In paragraphs (d) and (e), respectively, we establish that agents or brokers must comply with the terms of an agreement with the Exchange as well as applicable State laws. New paragraph (c)(3) establishes standards that would apply for an agent or broker's Internet Web site were to be used to assist individuals in selecting a QHP within the framework of enrollment through the Exchange.

f. General Standards for Exchange Notices (§ 155.230)

In § 155.230, we proposed standards for any notice sent by an Exchange in accordance with part 155. We additionally proposed that all applications, forms, and notices be provided in plain language, and be written in a manner that provides meaningful access to individuals with limited English proficiency and ensures effective communication for people with disabilities. We sought comment on whether we should codify specific examples of meaningful access in the final rule. We also proposed that the Exchange annually re-evaluate the appropriateness and usability of all applications, forms, and notices and consult with HHS when changes are made.

Comment: Several commenters expressed support for proposed § 155.230(a) that provides that any notice sent by the Exchange in accordance with part 155 must be in writing and include the information described in paragraphs (a)(1) through (a)(3). Many commenters further specified that the Exchange should send a second notice, or multiple notices, when the action taken in a notice (of eligibility determination) will result in a termination of coverage or another adverse action. Some commenters provided other specific recommendations about the content, timing, and formatting of notices, particularly for the purpose of clarity and applicability of relevant information on the part of the consumer. For example, some commenters specified that notices should include the relevant and appropriate range of customer service resource contact information based on the specific individual's location or circumstances. Some commenters suggested that HHS issue model notices or best practices for crafting notices for States, and commenters suggested that HHS develop templates or minimum standards of forms and notices.

Response: We believe that notices should be in writing, electronically whenever possible, and we are taking specific content, timing, and format-related recommendations we received from commenters into consideration as we move forward with development of model Exchange-issued notices. While § 155.230(a)(1) through (a)(3) outline some specific content standards for notices, we plan to issue model notices. In addition to the content specific standards described under § 155.230(a), we expect that notices will also include the date on which the notice is sent. In § 155.230(a)(3) we add that a notice must include the reason for the intended action.

Comment: Several commenters recommended that applicants and enrollees should be able to specify their preferred method of communication for notices, including the option to receive duplicative notices, and that electronic notices should fulfill the Exchanges' obligation to provide notices in writing in accordance with § 155.230(a). A few commenters requested clarification concerning whether Medicaid/CHIP will provide future guidance on the use of electronic communications.

Response: In the final rule, we do not make changes to address the use of electronic notices. In coordination with Medicaid and CHIP, we will address standards related to electronic notices and coordination of notices between the Exchange, Medicaid, and CHIP in future rulemaking. We note that our goal is to allow for electronic notices wherever practical. Future rulemaking in coordination with Medicaid and CHIP will also increase our ability to align standards across programs.

Comment: One commenter recommended that HHS consider whether it is necessary to set a specific timeline or clarify how quickly applications and notices must be processed by the Exchange. Another commenter suggested that the language for § 155.230 be expanded to refer to ''applications, forms, notices and any other documents sent by an Exchange.''

Response: We have not included general timeliness standards in § 155.230 of this final rule, as we did not propose them. However, subpart D contains timeliness standards related to eligibility determinations as interim final rules. In addition, as we develop model notices and future guidance, we will consider both notice timeliness standards and the applicability of § 155.230 to other documents issued by the Exchange.

Comment: A few commenters recommended that HHS remove ''if applicable'' from proposed § 155.230(a)(2) that reads: ''An explanation of appeal rights, if applicable.''

Response: Section 155.230 applies to all notices in accordance with part 155. However, in some cases, a notice of appeal rights is not relevant. For example, the notice of the annual open enrollment period in accordance with § 155.410(d) does not provide information specific to an individual and is not appealable. In contrast, the Exchange must include the notice of the right to appeal and instructions regarding how to file an appeal in any determination notice issued to the applicant in accordance with § 155.310(g), § 155.330(e), or § 155.335(h) of subpart D. We intend to address appeal rights and procedures in future rulemaking.

Comment: A majority of commenters supported the approach described in § 155.230(b) of the proposed rule, while others suggested that HHS add more detail to accessibility standards. Many commenters recommended that we provide specific standards and thresholds for translation of written information, and be understandable to limited English proficient populations. One common suggested threshold was to provide written translations where 5 percent or 500 limited English proficient individuals reside in the State or Exchange service area, whichever is less. Many commenters also recommended we add specific standards with respect to oral interpretation, including at no cost to the individual, and informing individuals how to access these services through use of ''taglines'' in at least 15 languages. A few commenters asked for

flexibility for States in developing language services standards as States' populations and needs differ, and one commenter expressed concern that a specific, uniform standard could pose an unreasonable burden.

Response: In response to these comments, we have modified our proposed regulation at § 155.230(b) to cross-reference the accessibility, readability, and translation and oral interpretation standards outlined in § 155.205(c). We plan to put forth guidelines relating to these standards in upcoming guidance.

Comment: Many commenters noted the importance of health literacy and the need to provide information that is readable and understandable. A few commenters suggested that the reading level of informational materials should be not greater than the 6th grade reading level.

Response: We recognize the importance of health literacy and significance of providing readable and understandable information. We will take these comments into consideration as we develop guidance that sets more specific standards and thresholds for readability, and as we develop joint guidance with the Department of Labor related to ''plain language.'' However, we have decided not to add specific reading level standards in the final rule.

Comment: While some commenters expressed support for the proposed § 155.230(c) that the Exchange review notices on an annual basis, other commenters were concerned about the burdensome and costly nature of an annual review. Some commenters instead suggested that such a review occur every three years or ''periodically.'' Several commenters recommended that Exchanges have flexibility in how they implement provision of notices and provided specific examples (that is, flexibility in content), while one commenter advised that Federal standards should provide a floor for notices but not diminish stronger standards that the State may have for notices. Commenters who supported an annual review also suggested that Exchanges seek consumer and stakeholder input as notices are developed and changes to notices are made. Some commenters also expressed support for or sought clarification related to how a State must consult with HHS when changes are made to notices, particularly regarding the scope of such a consultation. A few commenters suggested that notices should be reviewed annually as a part of the recertification process.

Response: In § 155.230(c) of the final rule, we revise the language from the proposed rule to provide that the Exchange must re-evaluate the appropriateness and usability of applications, forms, and notices without specifying the interval at which such review must occur. Due to commenters' concerns about the feasibility and burden of an annual review and the request for flexibility regarding notices implementation, we removed the standard that this review must occur on an annual basis. We anticipate that the model notices developed by HHS will help to ensure that Exchanges include the appropriate content for their notices and reduce administrative burden and cost to Exchanges. We will consider the feasibility of reviewing notices, and notably any proposed changes made to notices, and will consider stakeholder input, particularly Exchanges and State Medicaid programs, as the model notices are developed.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.230 of the proposed rule, with several modifications: we clarify in paragraph (b) that applications, forms and notices must comply with the readability and accessibility standards established in § 155.205(c) for the Exchange Internet Web site. In paragraph (c), we removed the proposed provision that the Exchange must re-evaluate applications, forms, and notices on an annual basis and also removed that the Exchange must consult with HHS when changes are made. In § 155.230(a)(3), we add that a notice must include the reason for the intended action.

g. Payment of Premiums (§ 155.240)

In § 155.240, we proposed that Exchanges must always allow an individual, at his or her option, to pay the premium directly to the QHP issuer. In addition, we proposed that an Exchange may permit Indian tribes, tribal organizations and urban Indian organizations to pay the QHP premiums on behalf of qualified individuals, subject to the terms and conditions determined by the Exchange. We solicited comment on how such an approach might work in an Exchange. We also invited comment on how to distinguish between individuals eligible for assistance under the Affordable Care Act and those who are not in light of the different definitions of ''Indian'' that apply for other Exchange provisions. With respect to the operation of a SHOP, we proposed that an Exchange must accept payment of an aggregate premium by a qualified employer.

Finally, we proposed that an Exchange may facilitate electronic collection and payment of premiums. We sought comment concerning Exchange flexibility in establishing the premium payment process and what Federal regulatory standards would be appropriate to ensure fiduciary accountability when an Exchange collects premiums.

Comment: One commenter suggested that QHP issuers report to an Exchange if an individual pays the issuer directly under the option described in § 155.240(a).

Response: We believe that this information will be transmitted from a QHP issuer and an Exchange through the process of effectuating enrollment through the Exchange and through the process to initiate advance payments of the premium tax credit and cost-sharing reductions. We outline reporting standards related to enrollment and notification if an individual stops payment in § 155.400, § 155.430, and § 156.270.

Comment: One commenter suggested that issuers should be responsible for collecting premiums directly from individuals, as described in proposed § 155.240(a), but that the Exchange should be permitted to garnish wages or undertake other legal means to collect unpaid premiums owed to QHP issuers.

Response: We clarify that nothing in the final rule imposes a responsibility on Exchanges to pursue unpaid premiums on behalf of a QHP issuer. We do not believe the Exchange should take on debt collection responsibilities for issuers.

Comment: With regard to proposed § 155.240(a), one commenter suggested that a possible interpretation of section 1312(b) of the Affordable Care Act is that payment facilitation by an Exchange could be considered direct payment by the individual to the QHP issuer.

Response: We interpret section 1312(b) of the Affordable Care Act to mean that individuals always have the option to pay a QHP issuer directly, and therefore, we maintain this policy as proposed.

Comment: In response to § 155.240(b) of the proposed rule, several commenters recommended that Exchanges must allow Indian tribes, tribal organizations, and urban Indian organizations to pay the unsubsidized portion of QHP premiums on behalf of enrollees. Some commenters noted that Indian tribes have a right to use Federal funds to pay insurance premiums on behalf of their members and a sovereign right to use their own funds for that purpose. Other commenters recommended that the Exchange accepts aggregated payments from employers so

it should also accept aggregated payments from tribes, tribal organizations, and urban Indian organizations. A few commenters recommended that HHS eliminate the qualifier, ''subject to the terms and conditions determined by the Exchange,'' in the final rule.

Response: We did not accept the recommendation that Exchanges must permit Indian tribes, tribal organizations and urban Indian organizations to pay premiums on behalf of enrollees. Premium aggregation is a unique function of the SHOP Exchange, and is not identified as a function of the individual market Exchange. However, we recognize that some Exchanges may wish to work with tribal governments to facilitate payment on behalf of enrollees, including aggregated payment. We encourage Exchanges to include this option as part of its consultation with tribal governments. This rule does not prohibit a QHP issuer from accepting third-party payments of premiums from tribal governments, tribal organizations, or urban Indian organizations for enrollees through the Exchange.

Comment: Many commenters supported the option for an Exchange to act as a premium facilitator or aggregator for the individual market, as permitted under § 155.240(d). Several commenters suggested strengthening the standard by establishing that Exchanges must have the capacity to facilitate payments in the individual market citing benefits such as ease for consumer, consistent source of payments for QHP issuers, program integrity, and provision of real-time enrollment and payment data for Exchange monitoring. Others suggested a standard that Exchanges set a default payment, and suggested that Exchanges provide multiple avenues for payment including premium facilitation, direct to issuer, in person, online, by phone, by mail, and through cash, debit, credit, check, or automatic electronic transfers. One commenter suggested that the Exchange Blueprint address how complexity added by multiple payment options would be mitigated and another commenter recommended that an individual select the payment methodology at the time of enrollment for that benefit year.

Response: Premium aggregation has potential benefits for individuals, but we also do not think that there are sufficient disadvantages in having individuals pay QHP issuers directly to warrant establishing premium aggregation as a minimum standard. We believe that the final rule balances the potential benefits of premium collection in the individual market with State flexibility. We encourage all Exchanges to provide consumers with multiple payment options that facilitate enrollment and avoid creating payment processes that create barriers. We note that Exchanges have the flexibility to create a default payment mechanism through the Exchange, and to direct individuals to select a payment option for a year at the time of enrollment.

Comment: Several commenters oppose proposed § 155.240(d) that allows for an Exchange to facilitate the collection and payment of premiums for the individual market. Commenters were concerned with several areas including cost, the timeliness of payments getting from consumers to the issue, and the additional complexity in the case of errors.

Response: We believe that premium aggregation may add value to an Exchange for consumers through ease of payment and to QHP issuers through having a single source of payment. Without premium aggregation in the small group market, a single entity would have to pay a variety of QHP issuers to administer its group health plan. However, the burden for paying premiums directly to QHP issuers is much less for individuals and families who are likely to be enrolled in a single QHP. Thus, premium aggregation is a minimum function of a SHOP, while it is optional for the individual market. We note that because an Exchange will need to establish premium aggregation functionality for a SHOP, it may be able to offer this option to individuals without additional up-front costs.

Comment: One commenter suggested that proposed § 155.240(d) ban paperwork for financial transactions and, instead, call for the use of electronic methods exclusively to lower administrative costs and allow quick feedback between Exchanges, qualified individuals, qualified employers, and QHP issuers.

Response: We believe that electronic payment methods have many benefits, and encourage Exchanges to use them where possible, but also acknowledge that electronic payment methods may not always be optimal for all consumers and may not be possible for all Exchanges. Therefore, it is not a minimum standard in this final rule.

Comment: Most commenters supported the proposed § 155.240(e) to adopt electronic means of collecting premium payments by individuals and employers, and the accompanying application of the privacy and standards outlined in § 155.260 and § 155.270. One commenter recommended deleting the cross reference to § 155.260, because this section related to privacy and security, not electronic transaction standards.

Response: We have maintained the cross-reference to § 155.260 in this final rule. Section 155.240(e) is meant to establish compliance with both electronic transactions standards in § 155.270 and privacy and security provisions of § 155.260. Because personally identifiable information may be exchanged in the process of premium payment, we believe the protections for collection, use and disclosure of information contained in standard transactions for premium payments are as vital as the format of these transactions.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.240 with the exception of the removal of proposed paragraph (c), as we believe that payment of premiums by qualified employers is sufficiently addressed in § 155.705. The other paragraphs have been re-numbered accordingly in the final rule.

h. Privacy and Security of Information (§ 155.260)

In proposed § 155.260, we addressed the privacy and security standards Exchanges must establish and follow. Specifically, we proposed that the Exchange apply appropriate security and privacy protections when collecting, using, disclosing or disposing of any personally identifiable information. In addition, we proposed that an Exchange apply these standards on contractors or sub-contractors through contracts or agreements with the Exchange.

We defined personally identifiable information (PII) and proposed prohibiting the collection, use, or disclosure of PII by the Exchanges unless: (1) required or permitted by § 155.260 of this subpart or other applicable law, and (2) the collection, use, or disclosure is made in accordance with subpart E of this part, § 155.200(c) of this subpart and section 1942 of the Act. We invited comment as to whether and how we should restrict the method of disposal in this section.

We also proposed that the security standards of the Exchange be consistent with HIPAA security rules described at 45 CFR 164.306, 164.308, 164.310, 164.312, and 164.314. We solicited comment on the aptness of adopting the HIPAA Privacy Rule's standards for Exchanges. Alternatively, we proposed to provide States with the flexibility to create a more appropriate and tailored standard, given the varied types of

information to which the Exchange would have access. We noted that we were considering directing each Exchange to adopt privacy policies that conform to the Fair Information Practice Principles (FIPPs), and sought comment on the appropriateness of FIPPs in this context and the best means to integrate FIPPs into the privacy policies and operating procedures of individual Exchanges. We listed examples of FIPPs-based principles derived from the Nationwide Privacy and Security Framework for the Electronic Exchange of Individually Identifiable Health Information, which is a model developed by the Office of the National Coordinator for Health IT. These are not purely FIPPs principles, but examples of how they may be used to develop robust privacy and security standards.

We also proposed that security policies and procedures must be in writing and available to the Secretary of HHS, and must identify any applicable laws that the Exchange will need to follow. In addition, we proposed that any data matching arrangements between the Exchange and agencies that administer Medicaid and CHIP for the exchange of eligibility information be consistent with all applicable laws. We also proposed that return information is kept confidential under section 6103 of the Code.

Finally, we proposed that any person that knowingly and willfully uses or discloses personally identifiable information inappropriately would be subject to a civil money penalty of not more than $25,000 per disclosure and any other applicable penalties that may be prescribed by law.

Comment: Many commenters recommended that HHS set a national minimum standard for use and disclosure of personally identifiable information (PII) under proposed § 155.260(b) rather than allow each Exchange flexibility to develop and implement standards customized to its operations. One commenter stated that HHS should harmonize State and Federal laws for the development and operation of information technology systems across all States. Commenters suggested adopting different existing privacy and/or security standards alone or in various combinations, including the Fair Information Practice Principles (FIPPs) model adopted by the Office of the National Coordinator for Health Information Technology, HIPAA Privacy, HIPAA Security, the Privacy Act, Medicaid standards at section 1902(a)(7) of the Act, the confidentiality and disclosure provisions of the Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE) program (42 U.S.C. 1320b-7), the HITECH Act, and the Gramm-Leach-Bliley Act (GLBA).

Response: We recognize that there should be robust minimum privacy and security standards to ensure the confidentiality and integrity of PII created, collected, used, or disclosed by an Exchange. We also accept the comment that each Exchange will need to consider any State and Federal laws governing individuals' privacy and security rights for the geographic area(s) in which it operates in order to ensure PII is protected against any reasonably anticipated uses or disclosures that are not permitted or required by law. We acknowledge the current variance among States' laws governing privacy and security, but believe that eliminating this variance would, in many cases, apply Federal standards to existing State privacy and security frameworks. This would be prohibitively expensive for many States, and could be detrimental to the goal of maintaining the confidentiality of PII. In addition, multiple security frameworks increase the complexity of the technological environment—if a State must follow two different frameworks, there is an increased risk of applying the wrong security controls to the Exchange. Finally, but equally important, we recognize the need for flexibility in the implementation of these standards in order to minimize implementation costs. The imposition of uniform standards would increase costs related to re-training staff, engaging contractors, investing in additional physical and technological infrastructure, and other tasks related to implementation of the new standards. We believe it would increase the complexity of State operations, with associated risks and costs, without providing meaningful improvements to the protection of PII.

In the final rule, we do not establish a single, baseline standard. We direct an Exchange to put in place safeguards that ensure a set of critical security outcomes, and we present a framework within which an Exchange must create its privacy and security policies and protocols. We specify that an Exchange establish and implement privacy and security standards that are consistent with the FIPPs-based principles identified in the ''Nationwide Privacy and Security Framework for Electronic Exchange of Individually Identifiable Health Information,'' the model adopted by the Office of the National Coordinator for Health Information Technology.[3] In addition to these FIPPs-based principles, § 155.260(a)(4) of this final rule directs Exchanges to establish and implement operational, technical, administrative, and physical safeguards that will ensure a set of defined privacy and security outcomes. We believe the standards in this final rule will minimize burden by allowing HHS and the States to leverage existing security infrastructure and allow Exchanges to tailor their privacy and security approaches to the types of information Exchanges will create, collect, use, and disclose, while providing a baseline set of standards and critical outcomes upon which all States must base their privacy and security policies and protocols.

We plan to release guidance to assist States in developing and implementing privacy and security policies and protocols that fulfill the standards of this section. In addition, HHS will assist States in the development of policies and protocols as part of the reviews and technical assistance provided to grantees under the section 1311(a) of the Affordable Care Act.

Comment: A large group of commenters requested that HHS codify sections 1411(g), 1413(c)(2), and 1414(a) of the Affordable Care Act. Several commenters recommended amending the language in proposed § 155.260(b)(1)(i) to explicitly establish that, based on section 1411(g) of the Affordable Care Act, information may not be created, collected, used, or disclosed unless ''strictly necessary.'' One commenter recommended that we remove the reference to ''other applicable law'' and replace it with specific references to sections 1411(g) and 1557 of the Affordable Care Act, sections 1942 and 1137 of the Act, and the Privacy Act of 1974.

Response: We believe that privacy and security of PII is of utmost importance. Accordingly, in the final rule, we have made major changes to the Exchange privacy and security standards, both to give more specific guidance to States as they implement the Exchange program, and to ensure confidentiality for individuals who may interact with Exchanges. As stated in the preamble to the proposed rule, we looked to sections 1411(g), 1413(c)(2), and 1414(a) of the Affordable Care Act as the basis for many of the provisions in the proposed regulatory text. First, we removed proposed paragraph (a), which defined personally identifiable information in the context of the Exchange program. This is a broadly

[3] Nationwide Privacy and Security Framework for Electronic Exchange of Individually Identifiable Health Information: *http://healthit.hhs.gov/portal/server.pt/community/healthit_hhs_gov_privacy_security_framework/1173.*

used term across Federal agencies, and has been defined in the Office of Management and Budget Memorandum M–07–16. In order to reduce duplicative guidance or potentially conflicting regulatory language, we have removed this portion of the proposed rule, and point to the aforementioned memorandum as the source of this definition.

Paragraph (a)(1) of the final rule specifically addresses PII that is created or collected for the purposes of determining eligibility for enrollment in a QHP, determining eligibility for other insurance affordability programs, or determining eligibility for exemptions from the individual responsibility provisions in section 5000A of the Code. This paragraph limits the purposes for which the Exchange can use this information to those outlined in § 155.200 of this subpart.

Paragraph (a)(2) is broader in scope than paragraph (a)(1), and includes all information collected for the purposes of carrying out Exchange minimum functions described in § 155.200. This paragraph prohibits the creation, collection, use or disclosure of PII unless the manner in which the Exchange does so is consistent with the privacy and security standards outlined in § 155.260(a).

Paragraphs (a)(3) through (a)(4) outline the privacy and security principles and critical outcomes, and set expectations for development of privacy and security protocols by Exchanges, and new paragraph (a)(5) specifies that the Exchange must monitor, periodically assess, and update the security controls and related system risks to ensure the continued effectiveness of those controls. We also inserted the provision from section 1413(c)(1) of the Affordable Care Act that an Exchange must develop and utilize secure electronic interfaces when sharing PII in § 155.260(a)(6).

We are not amending the final rule to codify section 1414(a) of the Affordable Care Act, because it falls under the jurisdiction of the Department of the Treasury. We are not codifying section 1557 of the Affordable Care Act because it is outside the scope of this rule. We are not codifying section 1137 of the Act, which includes standards for States' income and eligibility verification systems, in this final rule because it does not impose any additional privacy or security standards. In addition, section 1413(c)(3) of the Affordable Care Act simply directs that an Exchange can only determine eligibility on the basis of reliable, third party data, which is outside the scope of this section. We note that while the final rule does not propose to codify these listed provisions, Exchanges will need to comply with applicable laws that are outside the scope of this rulemaking.

Comment: A number of commenters requested clarification regarding HIPAA and Exchanges. One commenter requested that HHS declare that HIPAA applies to all Exchanges, but many commenters discouraged the use of this standard. A few commenters specifically requested that HHS not use HIPAA as the privacy standard. One commenter stated that applying HIPAA Privacy to non-HIPAA entities might permit broader collection, use, and disclosure of data than was intended by Congress in statutory limits set forth in section 1411(g) of the Affordable Care Act. Another commenter added that HIPAA lacks controls associated with new technologies.

Response: We believe HIPAA is not broad enough to adequately protect the various types of PII that will be created, collected, used, and disclosed by Exchanges and individuals or entities who have access to information created, collected, used, and disclosed by Exchanges. We recognize that there will be aspects of Exchanges, as health insurance marketplaces, that will not be reached by the HIPAA regulations governing health plans, certain providers, and clearinghouses (that is, ''HIPAA covered entities''). In clarifying these points, however, it is important to recognize that the privacy and security standards that are adopted in this rule do not obviate the need for HIPAA covered entities to meet the HIPAA Privacy and Security Rules' standards. The Exchange sections of the Affordable Care Act did not alter the applicability of HIPAA to HIPAA covered entities.

To avoid any further confusion on this point, we believe that it is advisable to remove any specific regulatory references to HIPAA in proposed § 155.260(b), which we have redesignated as § 155.260(a) of this final rule. We replaced such references with the standards outlined in the first response in this section. We believe that the privacy and security standards in the final rule are analogs of the HIPAA policies in the proposed rule, with similar standards and restrictions. As stated in the preamble discussion to § 155.260 in the proposed rule, each State will need to conduct an analysis of its operations and functions to determine its HIPAA status based on the definitions in 45 CFR 160.103, and, when applicable, meet any and all obligations under those regulations in addition to any Exchange standards. For instance, a State may need to consider whether the Exchange performs eligibility assessments for Medicaid and CHIP, based on MAGI, or conducts eligibility determinations for Medicaid and CHIP as described in § 155.302(b).

We have inserted language in § 155.200 of the final rule that will clarify the relationship between an Exchange and a QHP—as noted therein, nothing in this final rule should be construed to create a relationship between an Exchange and a QHP whereby an Exchange performs functions on behalf of a QHP. Further, we intend to release guidance that will assist States in determining the applicability of HIPAA and other Federal laws to Exchanges.

Comment: Several commenters suggested that HHS encourage States to apply privacy and security standards that are stricter than the minimum standard set forth by HHS regulations. Others asked that HHS make clear in the final rule that, even if an Exchange is covered by a single standard, it will continue to be subject to additional rules set by HHS and the States. Commenters asserted that State law regarding privacy and security should remain applicable. One commenter stated that HHS should provide States with the flexibility to enact more stringent standards based on those States' determination of the most appropriate standard.

Response: We accept commenters' suggestion that States retain the discretion to apply more stringent standards than the minimum privacy and security standards imposed by this section. Nothing in this final rule prevents or otherwise impairs the applicability of more stringent State law. Equally, we note that nothing in this final rule obviates the need to meet any other applicable Federal privacy and security laws.

Comment: One commenter asserted that HHS does not have the authority to require Exchanges to provide access to its data protection policies and procedures to HHS. The commenter requested that HHS provide an explanation of why it wants or needs access to an Exchange's data protection policies and procedures and what it plans to do with that information. The commenter also stated that HHS has no enforcement authority over State-based Exchanges and therefore may not take ''action'' against an Exchange with data protection policies and procedures the Secretary deems ''inadequate.'' In contrast, several commenters supported the provision in the proposed rule that Exchanges develop policies and procedures regarding the use, disclosure, and disposal of PII. Many

commenters asked that these policies and procedures be available to the public, and that HHS ensure that Exchanges engage stakeholders, including consumers, in the development of these policies and allow for public comment prior to submission to the Secretary. A few commenters asserted that these policies and procedures be part of the written Exchange Blueprint, in accordance with § 155.105 of the proposed rule, or another similar document that is available to the public.

Response: The Secretary has broad authority under section 1321(a) of the Affordable Care Act to issue appropriate regulations and standards with respect to the operation of Exchanges. Due to the private nature of the information provided to Exchanges, we believe that a process that allows the Secretary to ensure continued compliance with the privacy and security standards of § 155.260 is not only appropriate, but necessary. According to section 1321(c) of the Affordable Care Act, the Secretary has the authority to determine whether a State Exchange meets the requisite standards to operate. If the Exchange fails to meet these standards, the Secretary may establish and operate a Federally-facilitated Exchange in that State.

In addition, the Affordable Care Act also gives HHS an audit enforcement mechanism under section 1313. We believe the Secretary has broad authority to ensure the submission of these policies in accordance with 1313(a)(3) of the Affordable Care Act. This information is necessary to ensure the integrity of the Exchange and its related activities and to protect confidential consumer information. However, Exchanges do not have to release these policies and protocols to the public because this disclosure might reveal information that could damage the State's ability to maintain the integrity and security of its systems. Finally, while we have not included the privacy and security policies and protocols in the Exchange Blueprint, we believe we have the authority to do so if deemed appropriate by the Secretary.

Comment: Many commenters recommended that the privacy and security standards in proposed § 155.260 apply to application assisters, Navigators, contractors, other individuals who have access to PII gathered from individuals or available through an Exchange. One commenter asserted that the final rule should clearly affirm the obligation of these parties to abide by all Federal confidentiality and privacy laws.

Response: Individuals who have agreements with an Exchange that can collect, use, or disclose PII as part of their Exchange-related activities should comply with the final rule's privacy and security standards. However, we do not believe the Affordable Care Act grants the Secretary the authority to regulate all individuals and entities directly. Such authority is limited to the Exchange, who can impose these standards on individuals and entities that enter into agreements with the Exchange, such as contractors, agents, and brokers, and HHS grantees, such as Navigators. We have added § 155.260(b) of the final rule, which ensures that Exchanges impose privacy and security standards that are the same or more stringent than the privacy and security standards in § 155.260(a) as a condition of the agreement with other individuals or entities that will receive information through the Exchange.

Comment: Several commenters asked that HHS provide notice to individuals who share PII with an Exchange. Commenters also asked that HHS direct Exchanges to notify individuals of their privacy rights and note why the information is being collected prior to asking individuals to submit PII. One commenter said HHS should not share protected health information (PHI) without written consent before each disclosure.

Response: We believe the FIPPs-based principles in the final rule ensure that an Exchange will make individuals aware of the purpose of any information collection as well as the privacy policies that affect individuals and their PII. We have added language to new section § 155.260(a)(3)(iv) that an Exchange must develop privacy and security policies and protocols that are consistent with the FIPPs-based principle of ''Individual Choice,'' which states that individuals should be provided a reasonable opportunity and capability to make informed decisions about the collection, use, and disclosure of their personally identifiable information. In addition, in new § 155.260(a)(3)(iii), we establish that an Exchange's policies and protocols must be consistent with the principle of ''Openness and Transparency,'' which states that there should be openness and transparency about policies, procedures, and technologies that directly affect individuals and/or their personally identifiable health information. In addition, if a State determines that its Exchange is a HIPAA covered entity or business associate, as defined in 45 CFR 160.103, that Exchange must adhere to any applicable HIPAA privacy and security standards, including those regarding the protection of protected health information (PHI). The final rule addresses only personally identifiable information, as defined in § 155.260(a) and does not modify HIPAA.

Comment: A handful of commenters stated that Exchanges should obtain specific authorization from individuals prior to using any PII for marketing purposes. Some commenters requested that HHS prohibit Exchanges from sharing any information for marketing or fundraising purposes altogether. One commenter stated that HHS should specifically prohibit Exchanges from selling data, or allowing access to PII collected for Exchange purposes for data mining. Another commenter stated that HHS should specifically prohibit any secondary uses of PII that are not specifically authorized.

Response: Section 155.260(a) does not permit the use or disclosure of PII for marketing or fundraising purposes. The final rule clarifies that PII collected for those purposes of determining eligibility for enrollment in a QHP, determining eligibility for other insurance affordability programs, or determining eligibility for exemptions from the individual responsibility provisions in section 5000A of the Code, can only be used to the extent such information is necessary to carry out minimum functions in § 155.200 of this subpart.

Comment: Two commenters stated that HHS should be able to collect demographic information on a voluntary basis through the Exchange. Commenters believe that collection of demographic information would help to provide essential health information on vulnerable or underserved populations, facilitate tailored outreach and aid in enrollment activities, and provide input in the development of prevention and health care programming that address disparities.

Response: Section 1411(g) of the Affordable Care Act does not prohibit the collection of demographic data. We respond to this issue in greater depth in the preamble to § 155.405, which addresses the single, streamlined application.

Comment: Several commenters requested that HHS specify in the final rule that Social Security numbers should be collected for limited purposes. These commenters stated that Social Security numbers should be shared only for the purposes of determining eligibility for advance payments of the premium tax credit and cost-sharing reductions. Two commenters stated that Social Security numbers should be shared only for the purpose of identification of an individual.

Response: Sections 1411(b) and (c) of the Affordable Care Act give the Secretary the authority to ensure that applicants for enrollment in a QHP offered through an Exchange provide a Social Security number so that an Exchange can perform the requisite eligibility determination. While we believe that an individual's Social Security number should be collected and used for limited purposes, the use of an individual's Social Security number is essential to complete functions beyond identification—for example, the verifications described in sections 1411(c), (d), and (e) of the Affordable Care Act.

Comment: One commenter stated that HHS should establish criteria for the collection and retention of information when a consumer is a survivor or victim of domestic violence based on policies of child support collection programs.

Response: We do not believe that the final rule should contain the specific data collection for vulnerable populations for purposes other than those defined in the statute.

Comment: Two commenters asked that HHS ensure that Exchanges promptly notify potentially affected enrollees in the event of a data breach or unauthorized access to PII. One commenter suggested that HHS ensure that an Exchange conducts an investigation and hold the breaching party accountable, both legally and financially, for notification and investigation following the breach or unauthorized access.

Response: We do not plan to include the specific notification procedures in the final rule. Consistent with this approach, we do not include specific policies for investigation of data breaches in this final rule. We do, however, plan to release guidance that addresses breach procedures.

Comment: One commenter requested that the final rule include privacy and security standards for storage, retention, and response to legal and civil matters. Another commenter stated that HHS should not retain PII longer than is necessary to carry out an authorized Exchange function.

Response: While the rule does not specifically mention storage, retention, or response to legal and civil matters, we believe that the final rule adequately addresses privacy and security standards for all potential uses of data, including storage and retention. We therefore do not include these elements in the final rule. We expect privacy and security standards developed by the Exchange will address the storage of information when it is not in use. Also, the Exchange policies and protocols must apply to all requests for information from outside sources, including governmental bodies, the courts, or law enforcement officials. We also believe that Exchanges should not retain PII longer than necessary. Retention times for Federally-facilitated Exchanges will be approved by the National Archives and Records Administration. As these retention times have not yet been issued for these Exchanges, and as we believe that a single standard for retention should apply to all Exchanges, we plan to release guidance on this topic at a later date.

Comment: One commenter asserted that HHS should not create one central location for personal information. The commenter challenged the government's ability to protect personal information.

Response: This comment regarding the storage of personal information is operational in nature and outside the scope of this rule. We plan to release guidance describing the approach for collection and storage of PII. We believe that the privacy and security standards in the final rule are sufficiently robust to protect the types of PII that will be created, collected, used, and disclosed by Exchanges.

Comment: A few commenters suggested that HHS should define the operational solutions for Exchange policies and protocols for privacy and security. One commenter said that Exchanges should create usage logs that are subject to audit to ensure the data are being accessed appropriately and only for business purposes. Another commenter stated that HHS should implement procedures related to identity theft to address cases where an applicant or enrollee reports that someone has fraudulently submitted information in his or her name. One commenter recommended that HHS collect data in a manner that allows for de-identification so that data can be made available for other purposes, such as research and analysis.

Response: We believe that having policies and protocols to protect against identify theft and fraudulent enrollment is critical. However, setting operational solutions for complying with regulatory standards in this section is outside the scope of the rule. HHS will release guidance identifying potential operational solutions for storing and tracking data, identifying and preventing fraudulent submissions to the Exchange, and de-identifying data.

Comment: A number of commenters recommended that HHS address the issue of authentication of individuals who access PII through the Exchange. One commenter asserted that HHS should ensure that Exchanges authenticate all entities and individuals interacting with the Exchanges. Commenters also cautioned HHS to develop authentication procedures that are minimally burdensome and do not discourage or prevent lawful consumer access to the Exchange. One commenter stated that authentication procedures should be proportionate to the risks associated with the corresponding activities. This commenter also stated that authentication procedures should leverage commercially available database sources, a method currently in use by States to authenticate identity.

Response: Exchanges will need robust authentication procedures that are effective, efficient, and minimally burdensome for both States and individuals. We have added language to the final rule that Exchanges must implement safeguards to ensure that personally identifiable information is disclosed only to those authorized to receive or view it. In addition, we expanded the scope of the privacy and security standards by stating explicitly that these standards must apply, as a condition of contract or agreement with an Exchange, to individuals or entities, including but not limited to Navigators, agents, and brokers, that: (1) gain access to personally identifiable information submitted to an Exchange; or (2) create, collect, use or disclose personally identifiable information gathered directly from applicants, qualified individuals, or enrollees while that individual or entity is performing the functions outlined in the agreement with the Exchange.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.260 of the proposed rule regarding privacy standards, with the following modifications: in an effort to prevent confusion and duplication in terminology, we removed paragraph (a), which defined personally identifiable information (PII) in the context of the Exchange program. This is a term used broadly by all Federal agencies, and the term is defined in a 2007 OMB Memorandum, which we point to in the preceding preamble discussion.

We redesignated proposed paragraph (b) as new paragraph (a). In paragraph (a)(1) of the final rule, we added that, where the Exchange creates or collects personally identifiable information for the purposes of determining eligibility for enrollment in a QHP, determining eligibility for other insurance affordability programs, as defined in § 155.20; determining eligibility for enrollment in a qualified health plan; determining eligibility for other

insurance affordability programs, as defined in 155.20; or determining eligibility for the exemptions from individual responsibility provisions described in section 5000A of the Code, the Exchange may only use or disclose such personally identifiable information only to the extent such information is necessary to carry out the functions described in § 155.200 of this subpart. This paragraph limits the purposes for which the Exchange can use this information to those outlined in § 155.200 of this subpart. Paragraph (a)(2) is broader in scope than the type of PII described in (a)(1), and includes all personally identifiable information collected for the purposes of carrying out Exchange minimum functions described in § 155.200. This paragraph prohibits the creation, collection, use or disclosure of PII unless the manner in which the Exchange does so is consistent with the privacy and security standards outlined in § 155.260. In the final rule, we removed the provision from proposed paragraph (b)(2) for Exchanges to establish and follow operational, administrative, physical and technical security standards that, if carried out by a HIPAA covered entity would meet the standards at 45 CFR 164.306, 164.308, 164.310, 164.312 and 164.314. In its place we clarify that the Exchange must not create, collect, use or disclose PII unless the manner in which they do so is consistent with the standards of § 155.260. In new sections (a)(3)(i) through (viii), we outlined the principles that an Exchange must use in the development of its privacy and security standards. These include individual access; correction; openness and transparency; individual choice; collection, use, and disclosure limitations; data quality and integrity; safeguards; and accountability.

As described in new text added to (a)(4)(i) through (vi), an Exchange must establish and implement a set of operational, technical, administrative and physical safeguards that ensure the confidentiality, integrity, and availability of PII created, collected, used, and disclosed by the Exchange; that personally identifiable information is only used by or disclosed to those authorized to receive or view it; return information, as such term is defined by section 6103(b)(2) of the Code, is kept confidential under section 6103 of the Code; personally identifiable information is protected against any reasonably anticipated threats or hazards to the confidentiality, integrity, and availability of such information; and personally identifiable information is protected against any reasonably anticipated uses or disclosures of such information that are not permitted or established by law.

New paragraph (a)(5) directs the Exchange to monitor, periodically assess, and update the security controls and related system risks to ensure the continued effectiveness of the controls. In new paragraph (a)(6), we added a standard that the Exchange develop and utilize secure electronic interfaces when sharing personally identifiable information electronically.

In new paragraph (b), we added that, except for tax return information, when creation, collection, use, or disclosure is not otherwise required by law, an Exchange must establish the same or more stringent privacy and security standards (as those in § 155.260(a)) as a condition of contract or agreement with individuals or entities, such as Navigators, agents, and brokers, that gain access to personally identifiable information submitted to an Exchange; or create, collect, use or disclose personally identifiable information gathered directly from applicants, qualified individuals, or enrollees while that individual or entity is performing the functions outlined in the agreement with the Exchange.

New paragraph (c) directs the Exchange to ensure its workforce complies with the policies and procedures developed and implemented by the Exchange to comply with this section.

In new paragraph (e), we added language to clarify that the standards for data matching and sharing between the Exchanges and Medicaid, CHIP, and BHP, where applicable, are triggered when these entities share PII. In addition, we added paragraph (e)(1) through (e)(4), which state that data matching or sharing agreements must: meet any applicable requirements described in this section; meet any applicable requirements described in sections 1413(c)(1) and (c)(2) of the Affordable Care Act; be equal to or more stringent that the requirements for Medicaid programs under section 1942 of the Act; and, for those matching agreements that meet the definition of ''matching program'' under 5 U.S.C. 552a(a)(8), comply with 5 U.S.C. 552a(o).

In paragraph (g), we added that the civil penalty applies to each instance of knowing and willful improper use or disclosure of information. We redesignated proposed paragraph (b)(4) as new paragraph (d), and redesignated proposed paragraph (d) as new paragraph (f).

i. Use of standards and protocols for electronic transactions (§ 155.270)

In § 155.270 of the proposed rule, we proposed that the Exchange apply the HIPAA administrative simplification standards adopted by the Secretary in accordance with 45 CFR parts 160 and 162 when the Exchange performs electronic transactions with a covered entity. In addition, we proposed to codify the Health Information Technology (HIT) enrollment standards and protocols that were developed in accordance with section 3021 of the PHS Act, which was added by section 1561 of the Affordable Care Act, and that were adopted by the Secretary.[4] Specifically, we proposed that these aforementioned standards and protocols be incorporated within Exchange information technology systems.

Comment: HHS received several comments supporting our proposal to apply HIPAA administrative simplification standards, including the use of national standards and protocols for electronic transactions in § 155.270. However, one commenter expressed concern about the potential for gaps in the 005010 standard adopted by the Secretary in accordance with HIPAA. Another commenter, who supported the application of the administration simplification standards, added that HHS should apply any new transaction standards or protocols developed to supplement the HIPAA transactions consistently across all State-based Exchanges to promote administrative simplification among QHP issuers and eligibility services integrated with Exchanges.

Response: HIPAA administrative simplification standards are the appropriate standards for transactions that occur between the Exchange and covered entities, such as issuers, to continue the promotion of uniformity in administration and information interoperability of the Exchange activities as part of the larger health insurance industry. If Exchanges choose to implement standards in addition to those established in 45 CFR parts 160 and 162, they will continue to be in compliance with the final rule. As we work with Exchanges in connection with the information reporting standards for enrollment purposes to QHP issuers and/or Medicaid and CHIP agencies, we will be mindful of the potential for gaps in the 005010 standard adopted by the Secretary in accordance with HIPAA and will fully adhere to privacy and security standards in § 155.260 and § 155.270.

[4] *http://healthit.hhs.gov/portal/server.pt?open=512&mode=2&objID=3161.*

Comment: One commenter recommended that ''operating rules'' be included in the phrase ''the Exchange must use standards, implementation specifications, and code sets adopted by DHHS'' in § 155.270(a), noting that proposed § 155.240(e) contains language that an Exchange must use ''the standards and operating rules referenced in § 155.260 and § 155.270'' when conducting electronic transactions with QHPs involving premium payments or electronic fund transfers.

Response: We accept the commenter's recommendation to add the phrase ''operating rules'' to the proposed regulation text. In the final rule, we amended § 155.270(a) to include the term ''operating rules'' to address communications involving Exchanges that are subject to HIPAA administrative simplification.

Comment: Several commenters supported § 155.270(b) of the proposed rule, which directs an Exchange to incorporate standards developed by the Secretary in accordance with section 1561 of the Affordable Care Act, which amends the PHS Act and directs HHS to develop interoperable and secure standards and protocols for electronic enrollment transactions in consultation with the HIT Policy and HIT Standards committees. However, some commenters expressed concern about the ongoing usefulness of the committees' recommendations. Two commenters stated that the recommendations of those committees are now outdated. Another stated that a weakness in the cited HIT enrollment standards and protocols is the fact that these standards are not applicable to web services. Commenters noted that these standards and protocols facilitate the transfer of consumer eligibility, enrollment, and disenrollment information, but do not fill the need for standards that would apply to web services versions of HIPAA transactions. One commenter said it is critical that Exchanges design electronic data formatting and transmission standards that are uniform, easily implemented by QHP issuers, and leverage electronic data formatting and transmission standards that are already in use by health insurance carriers. Commenters also suggested that HHS recommend that Exchanges use specific data exchange formats and transmission standards such as those already established under the Health Insurance Portability and Accountability Act of 1996 and by CMS (for example, the 834 Enrollment, Online Enrollment Center (OEC) file format, and Health Plan Management System (HPMS) reporting).

Response: It will be important to leverage electronic data formatting and transmission standards that are already in use. However, we also believe that adhering to the broad standards and protocols developed by the Secretary, in collaboration with the HIT Policy and Standards committees, in accordance with section 3021 of the PHS Act, will provide standardization while allowing for the flexibility to leverage existing standards. We plan to issue guidance to help States determine appropriate transmission standards and data exchange formats for their Exchanges. We will also be consulting with the HIT Policy and HIT Standards committees at regular intervals to update the cited HIT enrollment standards and protocols to be more applicable to web services and to incorporate updates from Exchange electronic data formatting and transmission standards to broader standardization efforts. We also note that § 155.270 controls only how the Exchange sends information electronically to HIPAA covered entities. Section § 155.260 addresses privacy and security standards.

Comment: A few commenters expressed concern about the privacy and security of information being shared via electronic transactions in accordance with proposed § 155.270. Some commenters requested that this section reference the limitations on use and disclosure in § 155.260 of this subpart, which sets privacy and security standards for Exchanges. These commenters also recommended codifying section 1413(c)(1) of the Affordable Care Act, which directs States to develop secure interfaces for electronic data sharing. Another group of commenters expressed concern that co-mingling of data used for different purposes would create threats to the privacy of PII. These commenters requested that HHS ensure that Exchanges maintain a division between information that is stored and information that is used for eligibility determinations and redeterminations, with strict standards for disclosure or release of stored data.

Response: We believe the commenter's suggestion to include a regulatory citation to § 155.260 would be redundant because the privacy and security standards and protections in § 155.260 will apply to all transactions in which data are created, used, collected, stored, or disposed of by Exchanges. We also note that section 1413(c) of the Affordable Care Act is codified in section § 155.260(b)(3) and § 155.260(c). In addition, we note that the privacy and security standards cited in § 155.260 apply to both stored information and information used for eligibility determinations and redeterminations. Finally, while we acknowledge that stored data and data in active use warrant different privacy and security protocols, we believe that the privacy and security standards in § 155.260 direct Exchanges to have safeguards in place to prevent improper use, collection, or disclosure of information, whether the data are at rest or in transit. We therefore do not think it is necessary to address this distinction in our final regulation.

Comment: One commenter recommended that HHS adopt an operating rule that would apply to web services versions of the HIPAA transactions. This commenter encouraged HHS to consider the CORE Phase II rules, which have significant industry support, and to develop new standards that are not addressed in the CORE Phase II rules.

Response: It is important for HHS to adopt a standard for web-based transactions; however, detailed discussion on the adoption of such standards is outside the scope of this final rule. In this final regulation, we maintain the policy that Exchanges must apply and follow HIPAA standard transactions when engaging in electronic exchanges of information with Covered Entities.

Comment: One commenter requested clarification about whether it was in the intention of HHS to ensure that all electronic transactions with covered entities be consistent with the standards of 45 CFR parts 160 and 162. The commenter stated that this would direct all Medicaid agencies and issuers to use only standard transactions when conducting electronic transactions with Exchanges. Further, if it is the intent of HHS to permit, rather than require, these entities to conduct standard transactions with Exchanges, the commenter expressed that proposed § 155.270(a) should be rewritten to state this clearly. In addition, this commenter requested that HHS clarify whether Exchanges must conduct standard transactions with non-covered entities, such as employers and banks or their respective agents that request to do so. This clarification would ensure that employers and others that are now conducting (or may in the future conduct) such standard transactions as eligibility for a health plan, enrollment or disenrollment in a health plan, or health plan premium payments may be assured they can do so as standard transactions with exchanges.

Response: It is the intention of HHS to require, rather than to permit, adherence to the standards,

implementation specifications, and code sets adopted by the Secretary in 45 CFR parts 160 and 162, but only to the extent that the Exchange is performing electronic transactions with a covered entity. It is not the intention of HHS to establish standardized HIPAA transactions when Exchanges perform electronic transactions with non-covered entities, such as employers or banks. However, the Exchange has the flexibility to choose to use those standards, even if they are not minimum standards.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.270 of the proposed rule, with the following modification: in paragraph (a), we added a provision for Exchanges to use the operating rules adopted by the Secretary in 45 CFR parts 160 and 162.

4. Subpart D—Exchange Functions in the Individual Market: Eligibility Determinations for Exchange Participation and Insurance Affordability Programs

In this subpart, we proposed standards that the Exchange will use to determine eligibility for Exchange participation and insurance affordability programs. In the proposed rule and in this final rule, we organized the standards as follows: eligibility standards, eligibility determination process, and applicant information verification process.

a. Definitions and General Standards for Eligibility Determinations (§ 155.300)

In § 155.300, we proposed definitions for this subpart. Virtually all of the definitions proposed in this section were taken from other proposed regulations, including the Exchange establishment proposed rule which was published prior to the Exchange eligibility proposed rule. Specifically, in this section, we proposed definitions or interpretations for ''adoption taxpayer identification number,'' ''applicable Medicaid modified adjusted gross income (MAGI)-based income standard,'' ''applicable CHIP modified adjusted gross income (MAGI)-based income standard,'' ''application filer,'' ''Federal Poverty Level,'' ''Indian,'' ''insurance affordability programs,'' ''minimum value,'' ''non-citizen,'' ''primary taxpayer,'' ''State CHIP Agency,'' ''State Medicaid Agency,'' and ''tax dependent.'' We also proposed rules related to the applicability of Medicaid and CHIP rules and the acceptance of attestations.

Comment: A few commenters discussed the use of the term ''MAGI'' in the proposed rule. A commenter recommended referencing the term ''MAGI-based standard for Medicaid and CHIP,'' as defined in the Medicaid proposed rule, and the term ''MAGI,'' as defined in the Treasury proposed rule. One commenter also asked that the differences in the use of MAGI for Medicaid eligibility, such as income exemptions described in the Medicaid proposed rule, be specified in § 155.300.

Response: We recognize the need to reference the definitions of ''MAGI'' and ''MAGI-based income'' in § 155.300(a), and in this final rule include a reference to MAGI, as defined in 36B(d)(2)(B) of the Code, and MAGI-based income, as defined in 42 CFR 435.603(e). To clarify, we use ''MAGI'' with respect to household income for advance payments of the premium tax credit and cost-sharing reductions, and ''MAGI-based income'' with respect to household income for Medicaid and CHIP. We note that to further clarify this, we have added cross-references whenever ''household income'' is used throughout this subpart to specify whether it is in reference to household income for purposes of advance payments of the premium tax credit and cost-sharing reductions, as defined in section 36B(d)(2) of the Code, or household income for purposes of Medicaid and CHIP, as defined in 42 CFR 435.603(d).

Comment: We received a number of comments regarding the definition of Federal Poverty Level (FPL), as proposed in § 155.300(a). The definition, as proposed, specified that the FPL table used for eligibility for advance payments of the premium tax credit and cost-sharing reductions for a coverage year must be the table published as of the first day of Exchange open enrollment for the coverage year; commenters recommended that this definition be aligned with the definition of FPL used for Medicaid and CHIP eligibility, which uses the FPL table available at the time of an eligibility determination.

Response: We acknowledge the commenters' concerns. However, section 36B(d)(3) of the Code, as added by section 1401(a) of the Affordable Care Act, clearly defines the FPL table that must be used for eligibility determinations for advance payments of the premium tax credit and cost-sharing reductions in such a way that it is distinct from the FPL table that is used for Medicaid and CHIP eligibility during much of the year. Therefore, HHS will maintain the proposed definition of FPL in the final rule. To the definition of ''Federal poverty level'', we also included ''or FPL''; throughout the final rule we also remove references to Treasury regulations when using the term FPL since the term is defined in this section using the same definition as in section 36B of the Code.

Comment: We received many comments asking HHS to define ''incarcerated, other than pending the disposition of charges'' in proposed § 155.300. Several commenters also recommended that such a definition be similar to the definition of ''inmate of a public institution,'' as used by the Medicaid program (42 CFR 435.1010).

Response: We acknowledge commenters' suggestion that we further define the term ''incarcerated, other than pending the disposition of charges,'' as used in § 155.305(a)(2), and we intend to clarify this term in future guidance. We note that 42 CFR 435.1010 defines the term ''inmate of a public institution'', which is broader than the term ''incarcerated'' as used in this part; therefore, we do not have the authority or reason to adopt the broader definition, as the term ''incarcerated'' is used in the statute.

Comment: Commenters asked that we amend our definitions of ''State Medicaid Agency'' and ''State CHIP Agency'' to explicitly include those offices that administer them in the U.S. Territories.

Response: We acknowledge the suggestion, but are maintaining the proposed definitions in the final rule. These definitions reference Medicaid and CHIP regulations, which address Territories separately. Furthermore, the definition of ''State'' as included in section 1304(d) of the Affordable Care Act does not include Territories, and since this final rule implements only certain provisions of Title I of the Affordable Care Act that relate to States and Exchanges, we do not include Territories in these definitions.

Comment: We received several comments providing alternative interpretations of the definition of ''Indian'' than that which was included in the Exchange establishment and eligibility proposed rules. Some commenters suggested our definition is too narrow and inconsistent with Federal law. One commenter recommended that Indian be defined as a person who is a member of an Indian tribe or any person who is a member of an Indian tribe as defined in subsection (d) of the Indian Health Care Improvement Act (IHCIA), not limited to only Federally-recognized tribes. Other commenters stated that they believed that HHS's interpretation is not supported by the plain language of section 4 of IHCIA or section 4(d) of the Indian Self-Determination and

Education Assistance Act (ISDEAA) and believe that it is contrary to general principles of Indian law. Several commenters recommend that at a minimum HHS recognize that the definitions under the ISDEAA and IHCIA are operationally the same. Several commenters recommend that this rule align its definition with the Medicaid/CHIP definition found in 42 CFR 447.50.

Response: Since the Affordable Care Act statutory provisions identifying the specific benefits available to Indians incorporate section 4 of the IHCIA (for purposes of the special enrollment period described in § 155.420(d)(8)) and section 4(d) of the ISDEAA (for purposes of the cost-sharing provisions described in § 155.300(a) and (b)) for the definition of Indian, we are unable to adopt the Medicaid/CHIP definition under 42 CFR 447.50. Therefore, we maintain our proposed definition in this final rule. However, since both the ISDEAA and IHCIA operationally mean the same thing, there is uniformity among the definition of Indian for purposes of the Exchange-related benefits described in this final rule. We accept that the definitions of ''Indian'' as provided under section 4(d) of ISDEAA (codified at 25 U.S.C. 450 *et seq.*) and section 4 of IHCIA (codified at 25 U.S.C. 1603) operationally mean the same thing: an individual who is a member of an Indian tribe. In their definitions of an ''Indian tribe,'' both of these acts have nearly identical language that refers to a number of Indian entities (tribes, bands, nations, or other organized groups or communities) that are included in this definition on the basis that they are ''recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.''

Comment: One commenter asked that we clarify that the use of ''attestation'' does not prohibit the Exchange from obtaining electronic data and then asking an applicant to validate it, with the goal of increasing the efficiency and accuracy of the eligibility process.

Response: A key principle in our approach to the eligibility process is to streamline this verification process and maximize the use of electronic data. In many cases, we anticipate that the dynamic, electronic application process will take the approach that is recommended by the commenter. In other cases, it will be necessary to obtain information prior to verifying it. In general, the language of the final rule does not mandate a specific sequencing of activities, and is designed to allow flexibility within standards to ensure that the eligibility process can evolve to align with changes in technology and the availability of authoritative data. We also note that we will be providing a model application, which will include sequencing for the various steps needed in the eligibility process. Consequently, we are maintaining the language from the proposed rule. We look forward to working closely with States to achieve our shared goal of a streamlined eligibility process, including through the many areas in which we are providing flexibility to allow for continuous quality improvement in access to affordable health insurance.

We note that we have removed the language that specified that additional individuals, including a parent, caretaker or someone acting responsibly on behalf of such an individual, could provide attestations. The definition of application filer, which is now located in § 155.20, includes references to all individuals who may provide attestations; applicants, authorized representatives, and if the applicant is a minor or incapacitated, someone acting responsibly on behalf of the applicant. We have also replaced all references in this subpart regarding application filers providing attestations with references to applicants providing attestations, since the language in § 155.300(c) provides overarching clarification that attestations for applicants can be provided by application filers.

Comment: We received comment regarding our definition of primary taxpayer. A commenter expressed concern that an individual may not know his future filing status.

Response: While this final rule revises the term ''primary taxpayer'' to ''tax filer,'' to incorporate both spouses in a situation in which a married couple is filing jointly, we keep the proposed definition with minor revisions. Section 36B of the Code governs eligibility for the premium tax credit and advance payments of the premium tax credit, and specifies that it is based on the annual household income for a tax family for the year for which coverage is requested, which necessitates an understanding of an applicant's expected tax household for such year. We acknowledge challenges in communicating with individuals during the application process, including regarding tax filing status, and intend to work closely with stakeholders to develop effective communication strategies and tools.

Summary of Regulatory Changes

We are finalizing the definitions proposed in § 155.300 of the proposed rule, with the following modifications:

We removed the definition of ''application filer,'' and moved the definition to § 155.20, as a definition applicable for all of part 155; we address this change in comment response for § 155.20. In the definition of ''applicable CHIP MAGI-based income standard,'' we changed the reference from 42 CFR 457.05(a) to 42 CFR 457.310(b)(1) to align with the Medicaid final rule. For the definition of ''minimum value'', we clarified that the definition is used to describe coverage in an eligible employer-sponsored plan, and that minimum value means that an eligible employer-sponsored plan meets the standards with respect to coverage of the total allowed costs of benefits set forth in section 36B(c)(2)(C)(ii) of the Code. We added language to the definition of ''State Medicaid agency'' to clarify that the State Medicaid agency may be established or designated by the State in accordance with Medicaid regulations. For the definition of ''insurance affordability program'' we cross-referenced 42 CFR 435.4, but clarify that those programs included in this definition are the State Medicaid program under Title XIX of the Act, CHIP under Title XXI of the Act, the BHP under section 1331 of the Affordable Care Act, advance payments of the premium tax credit under section 36B of the Code, and cost-sharing reductions under section 1402 of the Affordable Care Act.

As further explained in response to comments later in § 155.305, we also changed the definition of ''primary taxpayer'' to ''tax filer,'' which reflects that the role includes either spouse in a joint-filing situation, and changed the term throughout the subpart. Within the definition, we also added ''or a married couple,'' to clarify that a tax filer may be an individual or a married couple, and deleted subparagraph (1)(iv), which included language clarifying that a primary taxpayer could be either spouse in a married couple, as this language is now redundant. In paragraph (a), we added a definition for ''modified adjusted gross income'' and a definition of ''MAGI-based income.'' We also change the rule described in paragraph (b) to clarify that the Medicaid and CHIP regulations referred to in this subpart will be implemented in accordance with the policies and procedures as applied by the State Medicaid or State CHIP agency or as approved by the agency in the agreement described in 155.435(a). In response to comments, we also added new paragraph (d), which describes a rule for the Exchange when determining whether information is ''reasonably compatible''; this clarification is

discussed in more detail in § 155.315 comment response.

We also made technical changes to this section. In paragraph (c), we changed the reference to § 155.310(e)(2)(ii) to § 155.310(d)(2)(ii). For the definition of ''applicable Medicaid MAGI-based income standard,'' we changed the reference to 42 CFR 435.1200(c)(3) to 42 CFR 435.1200(b)(2).

Lastly, throughout this subpart, we have removed cross-references to the Treasury proposed rule and replaced them with cross-references to the applicable language in section 36B of the Code, as added by section 1401(a) of the Affordable Care Act, as the Treasury proposed rule will not be finalized as of the publication of this rule. Upon publication of the Treasury final rule, we intend to replace the statutory references with the appropriate regulatory references.

b. Options for conducting eligibility determinations (§ 155.302)

Based on comments and feedback to the proposed rule, we are revising the rule to include this section as an interim final provision, and we are seeking comments on it.

Comment: We received a number of comments expressing support for a policy in which eligibility processes were integrated across the Exchange, Medicaid, and CHIP in order to ensure a seamless experience for consumers. Commenters further stressed the importance of a single entity conducting all eligibility determinations. We also received comments asking that States be permitted to rely on the Federal government for certain eligibility functions, and that State Medicaid and CHIP agencies be permitted to exercise final control over eligibility determinations for Medicaid and CHIP based on applications submitted to the Exchange, particularly when the State does not operate an Exchange. In particular, commenters asked that the Federal government offer to perform eligibility determinations for advance payments of the premium tax credit and cost-sharing reductions, based on an argument that this is not a current part of State processes, should be uniform across States, and is connected to the advance payment of premium tax credits with Federal funds. Another commenter suggested that rather than have the Federal government assume responsibility for an entire eligibility function, we should isolate certain components of the eligibility function.

Response: While a fully-integrated eligibility process will best achieve a seamless experience for applicants, we adopt the suggestion of the commenters who requested more flexibility for States regarding Medicaid and CHIP eligibility determinations. With appropriate standards, this approach could both maintain the seamless consumer experience while allowing States to design the eligibility process to best match their current systems and capacity. Accordingly, while the majority of subpart D continues to refer to all functions being carried out by the Exchange, in new § 155.302 of this final rule, we specify that the Exchange may fulfill these provisions through different options or combinations of options, subject to standards described in § 155.302(d). The standards in § 155.302(d) are intended to ensure that this approach to eligibility determinations still affords applicants a seamless path to enrollment in coverage and that it does not increase administrative burden and costs; we use certain performance standards identified in paragraphs (b), (c) and (d) and the agreements among the relevant agencies to achieve this. We clarify that these options are separate and distinct from the ''State Partnership'' model described in the preamble of § 155.200 of this final rule. We intend to provide further guidance on the implementation of these options, including the roles and responsibilities of the various parties, in the future.

First, in § 155.302(a), we clarify that the Exchange may fulfill its minimum functions under this subpart by either executing all eligibility functions, directly or through contracting arrangements described in § 155.110(a), or through one or both of the approaches identified in paragraphs (b) and (c) when other entities determine the eligibility of applicants for insurance affordability programs.

Second, in § 155.302(b), we identify that the Exchange may conduct an assessment of eligibility for Medicaid and CHIP rather than an eligibility determination for Medicaid and CHIP. Such an arrangement is permissible provided that the Exchange makes such an assessment based on the applicable Medicaid and CHIP MAGI-based income standards and citizenship and immigration status, using verification rules and procedures consistent with Medicaid and CHIP regulations, without regard to how such standards are implemented by the State Medicaid and CHIP agencies. That is, the assessment must follow verification rules and procedures that could be adopted by a State Medicaid or CHIP agency, although the use of this option is not contingent on the State Medicaid or CHIP agency doing so.

In paragraph (b)(2), we provide that notices and other activities that must be conducted in connection with an eligibility determination for Medicaid or CHIP are conducted by the Exchange consistent with the standards identified in this subpart or by the applicable State Medicaid or State CHIP agency consistent with applicable law.

In paragraph (b)(3), we outline the procedures the Exchange must follow when, based on the assessment conducted consistent with the standards in paragraph (b)(1), the Exchange finds an applicant potentially eligible for Medicaid or CHIP. We note that ''potentially eligible'' does not mean that the individual's income, as determined by the Exchange, necessarily is at or below the applicable Medicaid or CHIP MAGI-based income standard. We would expect in the interagency agreements between the State Medicaid and CHIP agencies and the Exchange, the Exchange's determination of which applications will be transferred for further action by the Medicaid and CHIP agencies will depend in part on the extent to which their verification procedures are consistent with those followed by the State Medicaid and CHIP agencies. The Exchange would transmit such an individual's information to the State Medicaid or CHIP agency in accordance with paragraph (b)(3) for additional processing, although the Exchange would consider him or her as ineligible for Medicaid or CHIP for purposes of eligibility for advance payments of the premium tax credit and cost-sharing reductions until the State Medicaid or CHIP agency notified the Exchange that the individual was eligible for Medicaid or CHIP. We will work with Exchanges to establish a reasonable application of the term ''potentially eligible'' taking into account an Exchange's assessment procedures.

In paragraph (b)(4), we describe the procedures that the Exchange must follow when, based on an assessment conducted in accordance with paragraph (b)(1), the Exchange finds that an applicant is not potentially eligible for Medicaid or CHIP based on the applicable Medicaid and CHIP MAGI-based income standards. The Exchange must consider such an applicant as ineligible for Medicaid or CHIP for purposes of determining eligibility for advance payments of the premium tax credit and cost-sharing reductions, and notify the applicant and provide him or her with the opportunity to withdraw his or her application for Medicaid and CHIP. To the extent that an applicant withdraws his or her application for Medicaid and CHIP (for example, if he

or she is approved for advance payments based in part on an assessment that he or she is not potentially eligible for Medicaid and CHIP), the applicant would not receive a formal approval or denial of Medicaid and CHIP; the alternative is for the applicant to request that the Exchange transmit the application to the State Medicaid and CHIP agency for additional processing.

As noted above, in addition to providing the applicant with the opportunity to withdraw his or her application for Medicaid and CHIP, in paragraph (b)(4)(i)(B), the Exchange must notify and provide the applicant with the opportunity to request a full determination of eligibility for Medicaid and CHIP by the applicable State Medicaid and CHIP agencies. For an applicant who requests a full Medicaid and CHIP determination, the Exchange must transmit all information as provided as part of the application, update, or renewal that initiated the assessment and any information obtained or verified by the Exchange to the State Medicaid and CHIP agency. The Exchange must also consider such an applicant as ineligible for Medicaid or CHIP for purposes of determining eligibility for advance payments of the premium tax credit and cost-sharing reductions until the State Medicaid or CHIP agency notifies the Exchange that the applicant has been determined eligible for Medicaid or CHIP.

The arrangement under paragraph (b) would also provide that the Exchange must adhere to the eligibility determination made by the Medicaid or CHIP agency, and that the Exchange and the applicable State Medicaid and CHIP agencies enter into an agreement specifying their respective responsibilities in connection with eligibility determinations for Medicaid and CHIP. We expect that these agreements will establish the responsibilities across the parties, and we will work with States to help develop such agreements. We note that we include rules related to assessments of eligibility for Medicaid and CHIP in paragraph (b)(1), to reinforce this concept. The standards and responsibilities of the Exchange, which we include for this agreement, complement the standards in 42 CFR 435.1200(d) of the Medicaid final rule. In accordance with these standards, we expect that when an assessment is conducted by the Exchange and transmitted to the State Medicaid or CHIP agency, and the Exchange is providing advance payments pending an eligibility determination for Medicaid and CHIP, the Exchange will receive a notification of the final determination of eligibility for Medicaid and CHIP made by the receiving agency. Together, these standards aim to avoid the duplication of requests for information from applicants and verification of information, and ensure timely eligibility determinations despite the 'hand-offs' to different agencies or entities. Furthermore, we believe the inclusion of the functions and the standards for the agreements described in § 155.302 are consistent with our goal of ensuring a seamless eligibility process. We also note that while defining what constitutes eligibility for minimum essential coverage for purposes of eligibility for advance payments of the premium tax credit and cost-sharing reductions is outside the scope of this regulation, we clarify that our understanding is that if the Exchange conducts an assessment in accordance with paragraph (b) of this section and does not find that an applicant is eligible for Medicaid and CHIP, such finding is sufficient to meet the eligibility criteria specified in § 155.305(f)(1)(ii)(B) with respect to Medicaid and CHIP.

Third, in § 155.302(c) of the final rule, we describe that the Exchange must implement a determination of eligibility for advance payments of the premium tax credit and cost-sharing reductions made by HHS. We also describe that such an arrangement must provide that all verifications, notices, and other activities conducted in connection with determining eligibility for advance payments of the premium tax credit and cost-sharing reductions are conducted by either the Exchange in accordance with all of the applicable standards described in this subpart or by HHS in accordance with the agreement between HHS and the Exchange. We also direct that the Exchange transmit all applicant information and other information obtained or verified by the Exchange to HHS. The Exchange would then adhere to HHS's determination for advance payments of the premium tax credit and cost-sharing reductions. The Exchange and HHS would also need to enter into an agreement specifying their respective responsibilities in connection with eligibility determinations for advance payments of the premium tax credit and cost-sharing reductions. As with the option described in § 155.302(b), we include particular standards and responsibilities which are designed to eliminate duplicative requests for information from applicants and ensure timely eligibility determinations.

In § 155.302(d) we outline the standards to which the Exchange must adhere when assessments of eligibility for Medicaid and CHIP based on MAGI and eligibility determinations for advance payments of the premium tax credit and cost-sharing reductions are made in accordance with paragraphs (b) and (c); such standards include that all eligibility processes are streamlined and coordinated across applicable agencies, that such arrangement does not increase administrative costs and burden on applicants, enrollees, beneficiaries, or application filers, or increase delay, and that applicable requirements under part 155 and section 6103 of the Code are met.

Lastly, we note that all of the above configuration options will necessitate coordination between the Exchange, HHS, and the State Medicaid and CHIP agency. We will work closely with States to develop operational solutions that will result in a high-quality eligibility process, which in turn will result in achievement of our shared coverage goals and a sustainable Exchange.

Summary of Regulatory Changes

We are finalizing the following provisions at § 155.302 and requesting comment. In paragraph (a), we provided that the Exchange may choose to satisfy the standards of subpart D directly or through contracting arrangements, or through one or a combination of options described in paragraphs (b) and (c), subject to additional standards outlined in paragraph (d).

If the Medicaid or CHIP agency retains final control of eligibility determinations for Medicaid and CHIP, in paragraph (b), we described that notwithstanding the standards of this subpart the Exchange may conduct assessments of eligibility for Medicaid and CHIP based on MAGI rather than the eligibility determinations for Medicaid and CHIP provided that: the Exchange makes such an assessment based on the applicable Medicaid and CHIP MAGI-based income standards and citizenship and immigration status, using verification rules and procedures consistent with 42 CFR parts 435 and 457, without regard to how such standards are implemented by the State Medicaid and CHIP agencies; notices and other activities conducted in connection with an eligibility determination for Medicaid or CHIP are performed by the Exchange consistent with the standards identified in this subpart or the State Medicaid or CHIP agency consistent with applicable law; when the Exchange assesses an individual as potentially eligible for Medicaid or CHIP, the Exchange transmits all information provided as a part of the application, update, or

renewal that initiated the assessment, and any information obtained or verified by the Exchange to the State Medicaid or CHIP agency via secure electronic interface; when the Exchange finds an individual not potentially eligible for Medicaid and CHIP, the Exchange considers the applicant as ineligible for Medicaid and CHIP for purposes of determining eligibility for advance payments of the premium tax credit and cost-sharing reductions and must notify such applicant, and provide him or her with the opportunity to either withdraw his or her application for Medicaid and CHIP or request a full determination of eligibility for Medicaid or CHIP by the State Medicaid and CHIP agencies. When an applicant requests a full determination of eligibility for Medicaid and CHIP, the Exchange must transmit all information obtained or verified by the Exchange to the State Medicaid and CHIP agencies promptly and without undue delay and consider such an applicant as ineligible for Medicaid and CHIP for purposes of determining eligibility for advance payments of the premium tax credit and cost-sharing reductions until the State Medicaid or CHIP agency notifies the Exchange that the applicant is eligible for Medicaid or CHIP. Furthermore, under the arrangement described in paragraph (b), the Exchange must adhere to the eligibility determination for Medicaid or CHIP made by the State Medicaid or CHIP agency, and the Exchange and the State Medicaid and CHIP agencies must enter into an agreement specifying their respective responsibilities in connection with eligibility determinations for Medicaid and CHIP. We note that in such an arrangement if the Exchange the State Medicaid and CHIP agencies are using the same information technology infrastructure formal transmissions may not be needed.

In paragraph (c), we establish that notwithstanding the standards of this subpart the Exchange may implement a determination of eligibility for advance payments of the premium tax credit and cost-sharing reductions made by HHS. Under such option we provide: that verifications, notices, and other activities necessary in connection with an eligibility determination for advance payments of the premium tax credit and cost-sharing reductions are performed by the Exchange in accordance with the standards identified in this subpart or by HHS, in accordance with the agreement between the Exchange and HHS; the Exchange transmits all information provided as a part of the application, update, or renewal that initiated the eligibility determination, and any information obtained or verified by the Exchange, to HHS via secure electronic interface, promptly and without undue delay; the Exchange adheres to the eligibility determination for advance payments of the premium tax credit and cost-sharing reductions made by HHS; and the Exchange and HHS enter into an agreement specifying their respective responsibilities in connection with eligibility determinations for advance payments of the premium tax credit and cost-sharing reductions.

In paragraph (d), we outline the standards to which assessments and eligibility determinations described in paragraph (b) and (c) must adhere, including that eligibility processes are streamlined and coordinated across insurance affordability programs; such arrangement does not increase administrative costs and burdens on individuals or increase delay; and any applicable standards under § 155.260 or § 155.270, § 155.315(i), and section 6103 of the Code with respect to the confidentiality, disclosure, maintenance, or use of information will be met. All such changes adopted for this section of the final rule are described in responses to comments for § 155.302.

c. Eligibility Standards (§ 155.305)

Based on comments and feedback to the proposed rule, we are revising the rule to include paragraph (g) of this section as an interim final provision, and we are seeking comments on it.

In § 155.305, we proposed to codify the eligibility standards for enrollment in a QHP and for insurance affordability programs. Specifically, we proposed that the Exchange determine an applicant eligible for enrollment in a QHP if he or she meets the basic standards for enrollment in a QHP outlined in the Affordable Care Act, including that the individual must be a citizen, national, or a non-citizen who is lawfully present, not incarcerated, and be reasonably expected to remain so for the entire period for which enrollment is sought. We solicited comments regarding the language that an individual be ''reasonably expected,'' for the entire period for which enrollment is sought, to be a citizen, national, or non-citizen lawfully present, and on how this policy can be implemented in a way that is straightforward for individuals to understand and for the Exchange to implement.

We also proposed that in order to be eligible to enroll in a QHP, an individual must intend to reside in the State in the service area of the Exchange. We clarified that this residency standard is designed to apply to all Exchanges, including regional and subsidiary Exchanges. In general, we proposed to align the Exchange residency standard with the Medicaid residency standards proposed in 42 CFR 435.403 of the Medicaid proposed rule (76 FR 51148). We clarified that this residency standard does not require an individual to intend to reside for the entire benefit year. We also proposed that the Exchange follow additional Medicaid residency standards (which were proposed in the August 17, 2011 Medicaid rule at 42 CFR 435.403) and the policy of the State Medicaid or CHIP agency to the extent that an individual is specifically described in that section and not under paragraphs (a)(3)(i) or (ii).

We proposed that for a spouse or a tax dependent who resides outside the service area of the tax filer's Exchange, the spouse or tax dependent will be permitted to either: (1) enroll in a QHP through the Exchange that services the area in which he or she resides or intends to reside; or (2) enroll in a QHP through the Exchange that services the area in which his or her tax filer intends to reside or resides, as applicable. We also solicited comment on any standards regarding in-network adequacy for out-of-State dependents that we should consider in a different section of the proposed rule. We also noted that HHS intends to allow State Medicaid agencies to continue to have State-specific rules with respect to residency for students under the Medicaid program, and solicited comments on whether different residency rules should be maintained for enrollment in a QHP or whether a unified approach should be adopted.

We proposed that the Exchange determine an applicant eligible for an enrollment period if he or she meets the criteria for an enrollment period, as specified in § 155.410 and § 155.420. We also proposed that the Exchange determine applicants' eligibility for Medicaid and CHIP. Specifically, we proposed that the Exchange determine eligibility for Medicaid based on categories utilizing the applicable Medicaid MAGI-based income standard, and that the Exchange determine eligibility for CHIP if an applicant meets the standards of 42 CFR 457.310 through 457.320 and has a household income within the applicable CHIP MAGI-based income standard. Additionally, we proposed to codify that if a BHP is operating in the service area of the Exchange, the Exchange will determine an applicant's eligibility for

the BHP, using the statutory criteria for eligibility.

We also proposed that the Exchange determine eligibility for advance payments of the premium tax credit based on eligibility standards proposed in paragraph (f)(1) and (f)(2), and that the Exchange may provide advance payments of the premium tax credit only for an applicant who is enrolled in a QHP through the Exchange. Additionally, we clarified that the Exchange must determine a tax filer ineligible to receive advance payments of the premium tax credit if HHS notifies the Exchange that the tax filer or his or her spouse received advance payments for a prior year for which tax data would be utilized for income verification and did not comply with the requirement to file a tax return and reconcile the advance payments of the premium tax credit for such year. In the event the Exchange determines that a tax filer is eligible to receive advance payments of the premium tax credit, we proposed that the Exchange calculate advance payments of the premium tax credit in accordance with 26 CFR 1.36B–3 of the Treasury proposed rule (76 FR 50931).

We also proposed that the Exchange require an application filer to provide the social security number (SSN) of the tax filer if an application filer attests that the tax filer has a SSN and filed a tax return for the year for which tax data would be utilized for verification of household income and family size. We solicited comments on how the Exchange can maximize the accuracy of the initial eligibility determination and establish a robust process for individuals to report changes in income to alleviate stakeholder concerns about income fluctuations during the year that may result in large reconciliation payments.

Finally, we proposed that the Exchange must determine applicants eligible for cost-sharing reductions based on eligibility standards described in paragraph (g), and we note that special eligibility standards for cost-sharing reductions based on Indian status are described in § 155.350 of this subpart. Specifically, we clarified in the proposed rule that an individual with household income that exceeds 250 percent of the FPL who is not an Indian is not eligible for cost-sharing reductions. We codified the statute such that an applicant must be enrolled in a QHP in the silver level of coverage in order to receive cost-sharing reductions. Lastly, we proposed three eligibility categories for cost-sharing reductions, and proposed that the Exchange transmit information about an enrollee's category to his or her QHP issuer in order to enable the QHP issuer to provide the correct level of reductions.

Comments: We received comments regarding the provision in proposed § 155.305(a)(1) which states that an individual must be ''reasonably expected'' to be a citizen, national, or a non-citizen who is lawfully present for the entire period for which enrollment is sought. One commenter recommended that the final rule remove the ''reasonably expected'' standard as it would limit non-citizens' eligibility to enroll in a QHP.

Response: The final rule maintains the ''reasonably expected'' standard in accordance with section 1312(f)(3) of the Affordable Care Act. We do not interpret this provision to mean that an applicant must be lawfully present for an entire coverage year; rather, we anticipate that the verification process will address whether an applicant's lawful presence is time-limited, and if so, the Exchange will determine his or her eligibility for the period of time for which his or her lawful presence has been verified. We anticipate providing future guidance on this topic, with a focus on minimizing administrative complexity and burden.

Comment: We received a number of comments related to and in support of the eligibility standard in proposed § 155.305(a)(2) that in order to be eligible for enrollment in a QHP, an individual must not be incarcerated, with the exception of incarceration pending the disposition of charges. Several commenters expressed concerns and provided recommendations about how to coordinate and promote continuity of care for individuals who will be transitioning from incarceration, and some commenters expressed this concern in regard to specific populations of incarcerated individuals. One commenter recommended that prisoners should be able to apply for coverage through the Exchange in advance of their release so that coverage can be effective on their release date, while another commenter noted that we should provide that Exchanges must accept applications in the event they are submitted on behalf of an inmate of a correctional facility. Also, one commenter suggested that prisoners should not be held responsible for reporting changes if they become incarcerated, and prisoners should not be held liable for repayment of advance payments of the premium tax credit for which they would be liable if they are receiving them and then become incarcerated.

Response: In § 155.305(a)(2) of the proposed rule, we codified section 1312(f)(1)(B) of the Affordable Care Act, which specifies that in order to be eligible for enrollment in a QHP, an individual must not be incarcerated, other than incarceration pending the disposition of charges. HHS will consider commenters' recommendations related to promoting continuity of care for individuals leaving incarceration in future guidance. Since the Exchange will accept applications and make eligibility determinations throughout the year, an inmate would not be precluded from applying for coverage through the Exchange in an effort to coordinate an effective date of coverage with his or her release date. We also note that § 155.420(d)(7) provides a special enrollment period (''A qualified individual or enrollee who gains access to new QHPs as a result of a permanent move'') which covers individuals who are released from incarceration.

The final rule maintains the provision specifying that an enrollee must report any change with respect to the eligibility standards in § 155.305, which includes when an enrollee becomes incarcerated, other than incarceration pending the disposition of charges, as it is important for the Exchange to be able to discontinue the enrollment and recompute any advance payments or cost-sharing reductions to account for the change in eligibility. As with other changes that affect eligibility for enrollment in a QHP, not reporting such a change so that advance payments of the premium tax credit can be adjusted accordingly exposes a tax filer to the risk of repayment of advance payments of premium tax credits at tax filing.

In addition, we note that we clarify in § 155.330(b)(4) of the final rule that an application filer may report a change on behalf of an enrollee, which, for example, allows a member of an enrollee's household to report the enrollee's incarceration. Also, in § 155.330(d)(2) of this final rule, we allow for flexibility for Exchanges to periodically check trusted data sources, provided that the data matching program meets certain standards; this provision could allow an Exchange to engage in data matching on incarceration to provide an additional avenue to capture changes.

Comment: We received a number of comments related to the residency standards for enrollment in a QHP, described in proposed § 155.320(a)(3). Several commenters recommended that the residency standards across the Exchange, Medicaid and CHIP be aligned and uniform so as to limit States' discretion in precluding certain transient populations from having continuous coverage throughout the

year. Several commenters recommended that we align with the Medicaid ''intent to reside'' standard, and include the two provisions from the residency standard as proposed in the Medicaid proposed rule at 42 CFR 435.403(h)(1)(ii). One commenter suggested that we add the following alternative as a means of satisfying the residency standard: ''Has entered the State with a job commitment (whether or not he or she is currently employed).'' A few commenters recommended that we should adopt a more stringent residency standard than included in the Medicaid proposed rule.

Response: We intend to align the residency standards with those of the Medicaid regulations; therefore, we are revising § 155.305(a)(3) in this final rule in response to commenters' recommendations that we align residency standards with Medicaid and CHIP and in consideration of changes made from the Medicaid proposed rule to the Medicaid final rule. For example, in § 155.305(a)(3)(i)(B), this final rule provides that an applicant age 21 and over also meets the residency standard if he or she has entered the service area of the Exchange with a job commitment or seeking employment (whether or not the applicant is currently employed). This provision was included in the Medicaid proposed rule and is included in the Medicaid final rule; we include it here to provide consistency between these rules. We add language throughout § 155.305(a)(3) to clarify that individuals must be ''living'' in the service area of the Exchange in addition to the prior standards, to clarify that an individual must be physically present in the service area of the Exchange in order to be eligible for enrollment in a QHP through that Exchange. We note, however, that this does not preclude an individual from submitting an application and receiving an eligibility determination in advance of relocating to a new State; in such a situation, his or her eligibility will not be effective until he or she is ''living'' in the new State. We have also restructured paragraph (a)(3)(i) and (ii) for clarity, and have added specific references to the Medicaid final rule.

Comment: We received a number of comments related to the proposal in § 155.305(a)(3)(iv) related to residency standards for family members who meet the applicable residency standard for a different Exchange service area than of one or both of the tax filers. While several commenters supported the provision in the proposed rule that dependents and spouses may enroll in a QHP offered through the Exchange in the service area where they reside or through the Exchange serving the area where a tax filer meets the applicable residency standard (or in the case of a spouse who is married filing jointly, another tax filer meets the applicable residency standard), several commenters opposed this provision. If this policy is maintained, one commenter recommended that HHS develop a system for Exchanges to easily apportion premium tax credits among family members. Several commenters expressed concern that a person who purchases coverage from a QHP offered through the Exchange where he or she does not live would likely encounter difficulties in finding care as well as significant additional costs from the use of out-of-network providers. In addition, the QHP issuer would be limited in its ability to facilitate use of the highest quality and most efficient providers and coordinate care across providers and settings. Commenters encouraged HHS to consider limiting this option. Several commenters recommended that HHS establish an electronic mechanism for Exchanges to communicate with each other, as well as sought clarification about how the Exchanges will coordinate tax credits for members of the same tax household purchasing coverage in QHPs through different Exchanges and other specific operational details around verification and the eligibility process. One commenter noted that this would be a simpler process if a tax filer could purchase coverage for a dependent or spouse in the other State's Exchange through the tax filer's Exchange via a link or web portal.

Response: We maintain the residency standard in § 155.305(a)(3)(iv) of the final rule with limited modifications. All of the modifications result from a change in our terminology from ''primary taxpayer'' to ''tax filer'' in an effort to reduce confusion that could be associated with the term ''primary taxpayer,'' notably since primary taxpayer generally refers to the first name on the tax return of two individuals who are married, but both individuals are tax filers and there is no significance to which is the primary taxpayer for purposes of the premium tax credit (this change has been made throughout the final rule). The remaining changes are to clarify that any member of a tax household that has members in multiple Exchange service areas may enroll in a QHP through any of the Exchanges for which one of the household's tax filers meets the applicable residency standard; the exception to this standard is that when both tax filers enroll in a QHP through the same Exchange, the tax filers' dependents may choose either the Exchange through which the tax filers are enrolled or an Exchange for which the dependents meet the applicable residency standard in paragraphs (a)(3)(i)–(iii). Taken together, we expect that these residency standards will ensure that enrollees in QHPs through the Exchange have appropriate access to services.

Regarding comments suggesting that Exchanges should be able to apportion premium tax credits among family members, we will provide additional information in the future in coordination with the IRS. We note that the apportionment of advance payments will need to occur when a single tax household is covered by more than one QHP. Regarding comments we received related to network adequacy, a more detailed response is provided in § 156.230 of this final rule. We also note that multi-State plans certified by and under contract with the Director of the Office of Personnel Management may provide another option in such scenarios. In response to comments recommending that we create an electronic mechanism by which Exchanges can communicate with each other and other operational details of the eligibility process, HHS is considering commenters' recommendations regarding how best to coordinate cross-Exchange activities.

Comment: A few commenters strongly supported limiting enrollment to a single open enrollment period per year.

Response: The language in § 155.305(b) of the proposed rule specified that the Exchange determine an applicant eligible for an enrollment period in accordance with the provisions regarding enrollment periods in § 155.410 and § 155.420.

Comment: A number of commenters expressed overall support for the Exchange conducting Medicaid and CHIP eligibility determinations, and some suggested that the regulation be amended to include a standard that an Exchange determine eligibility for Medicaid on any basis of eligibility offered in that State (such as optional eligibility categories and categories that do not use the MAGI standard). Some commenters expressed support for uniformity and standardization around eligibility and enrollment in general. Several commenters recommended that HHS provide that the Exchange must collect information related to non-MAGI eligibility to ensure that applicants can truly avail themselves of a ''no wrong door'' application process for Medicaid. A few commenters supported the clarification that eligibility for emergency Medicaid services does not

count as Medicaid eligibility for purposes of eligibility for premium tax credit and cost-sharing reductions through the Exchange. Another recommended that there should be an emphasis on child-only plans through the Exchange for those children who are not eligible for Medicaid.

Response: Sections 155.345(b) and (d) of the final rule specify that the Exchange must assess information provided by an applicant who is not eligible for Medicaid based on standards specified in § 155.305(c) to determine whether he or she is potentially eligible for Medicaid in a category that does not use the MAGI standard, and refer any potentially eligible individuals to the Medicaid agency for an eligibility determination. In addition, § 155.345(c) of the final rule specifies that the Exchange must provide an opportunity for an applicant to request a full Medicaid eligibility determination based on factors not considered in § 155.305(c). We believe that this proposal creates a streamlined eligibility process for the vast majority of applicants, while also allowing applicants who may be eligible for a category that does not use the MAGI standard to access a more streamlined process than is available today, without requiring the Exchange to accommodate all of the complexity associated with the categories of Medicaid that were not modified by the Affordable Care Act.

In order to maintain a single, streamlined application, and in accordance with section 1413(b)(2) of the Affordable Care Act, applicants will not be asked for more information than is needed for the Exchange to make an eligibility determination for insurance affordability programs based on MAGI, apart from collecting basic information to assess individuals for potential Medicaid eligibility on a non-MAGI basis, for example a single triggering question. Applicants will always have the opportunity to request a full determination of eligibility for Medicaid. We also note that we know that several States are considering leveraging a single Exchange/Medicaid/CHIP technology platform in future years to also accommodate non-MAGI Medicaid applicants, which is permitted under the statute and final rule. In response to commenters requesting clarification about whether eligibility for Medicaid coverage that is limited to emergency services counts as minimum essential coverage for purposes of eligibility for advance payments of the premium tax credit and cost-sharing reductions, this determination is subject to other rulemaking. We note, however, that individuals who are not lawfully present, are not eligible for enrollment in a QHP, let alone for enrollment in a QHP that is supported by advance payments and cost-sharing reductions. We also note that immigration status is not a factor for emergency Medicaid eligibility. In this final rule, we also revise § 155.305(c) to streamline references to Medicaid citizenship and immigration status and residency eligibility standards, and align with the Medicaid MAGI-based assessment described under 42 CFR 435.911(c)(1). Lastly, regarding child-only plans, we note that the Exchange will inform an applicant of all of the QHPs for which he or she is eligible, including any child-only plans.

Comment: We received a range of comments related to performance measurement and oversight tools related to eligibility and enrollment. One commenter recommended a modification of Federal audit tools to ensure that States are evaluated based on the number of eligible people they correctly enroll for coverage. Some commenters recommended that QHP issuers should not be held responsible for any errors that the Exchange may make in the eligibility determination process, while some commenters sought clarification of an Exchange's liability for inaccurate eligibility determinations. Other commenters requested State flexibility when operational challenges impede a seamless eligibility and enrollment process (including, for example, transitioning enrollees from one insurance affordability program to another).

Response: We plan to regulate in the future on oversight tools and performance measurements in future rulemaking and guidance. We will consider commenters' recommendations regarding oversight tools and performance measurement as we develop future guidance on this topic.

Comment: Several commenters strongly supported the Exchange sharing common eligibility standards with Medicaid, CHIP, and the BHP, and determining eligibility for the BHP. Several commenters suggested that the Exchange should conduct eligibility determinations for other programs that are not related to health insurance coverage, such as the Supplemental Nutrition Assistance Program and the National School Lunch Program. Other commenters stated that individuals who are served by those programs should also be enrolled in the appropriate health care program if they are not already enrolled. At least one commenter recommended that those applying for unemployment insurance also be directed towards health benefits for which they might be eligible.

Response: In the final rule, we do not require the level of integration between the Exchange and other human services programs that some commenters recommended. This would not preclude a State from leveraging the technology platform and supporting infrastructure for insurance affordability programs for other health and human services programs in the future, provided that privacy and security standards (and applicable cost allocation rules) are met, particularly regarding the use and disclosure of information provided to the Exchange by applicants and Federal agencies. To this end, on August 10, 2011 and January 23, 2012, CMS, the Administration for Children and Families (ACF), and the Food and Nutrition Service (FNS) issued joint letters providing guidance on the limited exception to cost allocation guidelines which allows Federally-funded human services programs to benefit from Medicaid, CHIP, and Exchange technology investments.

Comment: We received a number of comments related to eligibility standards for advance payments of the premium tax credit, in particular regarding compliance with the filing requirement described in proposed § 155.305(f)(4). Some commenters recommended that the final rule clarify that if a tax filer is determined eligible for advance payments of the premium tax credit but opts not to take advance payments, his or her ability to file for the credit at the end of the tax year is not affected; commenters also asked whether such a scenario would adversely affect his or her eligibility for cost-sharing reductions. One commenter requested clarification regarding the length of time for which a taxpayer would be deemed ineligible for advance payment of premium tax credit following a failure to file a tax return. Some commenters suggested States should have the flexibility to discontinue eligibility for advance payments of the premium tax credit and Medicaid if Federal tax filings are not current.

Response: We clarify that when a tax filer is determined eligible for advance payments of the premium tax credit but opts to not have advance payments made on his or her behalf, the tax filer may still claim the premium tax credit on his or her tax return; further, such action does not adversely affect his or her eligibility for cost-sharing reductions. Regarding § 155.305(f)(4), we note that the language of the proposed rule, which we maintain in the final rule, specifies that the

Exchange may not determine a tax filer eligible for advance payments if advance payments of the premium tax credit were made on behalf of the tax filer, or either spouse if the tax filer is a married couple, for a year for which tax data would be utilized for verification of household income and family size, and the tax filer or his or her spouse did not comply with the requirement to file an income tax return for that year as required by 26 U.S.C. 6011, 6012, and implementing regulations and reconcile the advance payments of the premium tax credit for that period.

We also note that a tax filer faced with this bar to eligibility may be able to regain eligibility by filing a tax return and reconciling the advance payments of the premium tax credit. Lastly, we do not have authority to discontinue Medicaid eligibility based on a failure to file a tax return. In the final rule, we also make a correction to the eligibility criteria for advance payments of the premium tax credit at § 155.305(f)(1)(ii) to align with the statutory requirement in section 36B(c)(1)(A) of the Code; the Exchange must generally determine that the tax filer is expected to have a household income of greater than or equal to 100 percent of the FPL.

Comment: We received several comments requesting clarification as to how eligibility will be determined for specific household composition scenarios. One comment, for example, asked for clarification regarding situations in States that recognize same-sex marriages or civil unions.

Response: In § 155.305(f) in this final rule, we use a number of cross-references to section 36B of the Code which governs the premium tax credit; these rules are the same rules that are used to determine eligibility for advance payments of the premium tax credit. Consequently, we refer commenters to those rules for details regarding family and family size. Similarly, in § 155.305(c) and (d), we use a number of cross-references to 42 CFR parts 435 and 457, which contain the Medicaid and CHIP rules for household composition; we refer commenters to those rules for details regarding these provisions.

Comment: We received a comment asking that we address the issue of deeming a sponsor's income to non-citizen applicants for Federal means tested public benefits; specifically, the commenter asked whether that policy is applicable to calculation of annual household income for purposes of determining eligibility for advance payments of the premium tax credit and cost-sharing reductions. The same commenter suggested that for applicants who are determined ineligible for Medicaid as a result of accounting for sponsor income and whose annual household income is below 100 percent FPL, we should apply the special rule described in § 155.305(f)(2) that would allow such applicants to be determined eligible for advance payments of the premium tax credits.

Response: We intend to work closely with Treasury to address the applicability of sponsor deeming in the calculation of annual household income for purposes of determining eligibility for advance payments of the premium tax credit and cost-sharing reductions through future rulemaking or guidance. Such rulemaking or guidance will also address the relationship between sponsor deeming and the special rule described in § 155.305(f)(2).

Comment: Several commenters expressed concern about the affordability of coverage for low-income individuals, notably lawfully present immigrants who are eligible for advance payments of the premium tax credit but ineligible for Medicaid. Some commenters requested clarification that lawfully present non-citizens with incomes below 100 percent FPL could be determined eligible for cost-sharing reductions in the 100 to 150 percent FPL eligibility category.

Response: In response to comments received regarding lawfully present non-citizens with incomes below 100 percent FPL and eligibility for cost-sharing reductions, we are clarifying in § 155.305(g)(2)(i) of the final rule that an individual who is eligible for advance payments of the premium tax credit under § 155.305(f)(2) (non-citizens who are lawfully present and are ineligible for Medicaid) fall within the 100 to 150 percent FPL eligibility category for purposes of determining eligibility for cost-sharing reductions. We also correct § 155.305(f)(1)(i) to provide that an applicant who expects to have a household income of greater than or equal to 100 percent FPL may be determined eligible for advance payments of the premium tax credit; this is a technical correction to comply with section 36B(c)(1)(A) of the Code.

Comment: Several commenters suggested we clarify the relationship between advance payments of the premium tax credit and other forms of coverage, such as CHIP or Medicare, for determining eligibility as well as for the calculation of the premium tax credit.

Response: We note that comments of this nature are outside the scope of this rule and are within the jurisdiction of the Secretary of the Treasury.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.305 of the proposed rule, with several modifications: we added language throughout § 155.305(a)(3) of the final rule to clarify that individuals must be ''living'' in the service area of the Exchange in addition to the prior standards. In addition, in § 155.305(a)(3)(i)(B), we include in the final rule that an applicant age 21 and over also meets the residency standard if he or she has entered the service area of the Exchange with a job commitment or seeking employment (whether or not currently employed). We have also restructured paragraph (a)(3)(i) and (ii) for clarity, and have added specific references to the Medicaid final rule. In paragraph (c)(1), we also added a standard that the Exchange must determine an applicant eligible for Medicaid if he or she meets the non-financial eligibility criteria for Medicaid for populations whose eligibility is based on MAGI (that is, citizenship or immigration status, residency, etc.), as certified by the Medicaid agency at 435.1200(b)(2), and added a cross-reference to 42 CFR 435.603(d) for household income, in addition to the other criteria described under this paragraph. In paragraph (d), we added a cross-reference to 42 CFR 435.603(d) for household income.

In paragraph (f)(1)(i), we have changed ''at least 100 percent'' to ''greater than or equal to 100 percent'' to align with statutory language. In paragraph (f)(1)(ii)(B), we codified the exception for coverage in the individual market. In paragraph (f)(4), we have added, ''or either spouse if the tax filer is a married couple,'' and clarified that applicable Treasury provisions requires a tax filer on whose behalf advance payments are made to both file an income tax return, and as a part of that return, to reconcile the advance payments made.

We have combined and restructured paragraphs (g) and (h) of the proposed rule into paragraphs (g)(1) and (g)(2) of the final rule. In paragraph (g)(2)(i) we have added a provision to implement section 1402(b) of the Affordable Care Act, which provides a special rule for non-citizens who are lawfully present; this revision clarifies that individuals who are expected to have a household income of less than 100 percent of the FPL for the benefit year for which coverage is requested and who are also eligible for advance payments of the premium tax credit under paragraph (f)(2) are eligible for cost-sharing reductions.

In paragraph (g)(3), we have added language implementing section 1402 of the Affordable Care Act, which provides cost-sharing reductions at a policy level, in situations where multiple tax households are covered by a single policy. In this paragraph, we specify a hierarchy of available cost-sharing provisions, and explain that when multiple tax households are covered on a single policy, the Exchange will apply only the first category of cost-sharing reductions listed in this paragraph. The categories are listed such that the lowest level of cost-sharing reductions will be provided to the combined households. We note that the tax households are always free to purchase separate policies, and in doing so, receive the benefit of all cost-sharing provisions for which they are eligible.

Lastly, in paragraph (g)(4) we added language to clarify that household income for the purposes of eligibility for cost-sharing reductions is defined in accordance with section 36B(d)(2) of the Code, which is the same definition used for advance payments of the premium tax credit. We also clarified that the time period for measuring income for cost-sharing reductions is the same as for advance payments of the premium tax credit.

We also made technical changes to the final rule. In § 155.305(c), we changed the reference to 42 CFR 435.1200(c)(1) to 42 CFR 435.1200(b)(2), and throughout the section, as in the rest of the subpart, we replaced language regarding application filers providing attestations with references to applicants providing attestations, since the language in § 155.300(c) provides overarching clarification that attestations for applicants can be provided by application filers.

d. Eligibility Determination Process (§ 155.310)

Based on comments and feedback to the proposed rule, we are revising the rule to include paragraph (e) of this section as an interim final provision, and we are seeking comments on it.

In § 155.310, we proposed the process by which the Exchange will determine an individual's eligibility for enrollment in a QHP through the Exchange and for insurance affordability programs. Specifically, we proposed that the Exchange must accept applications from individuals in the form and manner described in § 155.405, and included standards around the collection of information from non-applicants. We also proposed that the Exchange permit an individual to decline an eligibility determination for insurance affordability programs. In addition, we proposed that the Exchange accept an application and make an eligibility determination for an applicant seeking an eligibility determination at any point in time during a benefit year. After the Exchange has collected and verified all necessary data, we proposed that the Exchange conduct an eligibility determination in accordance with the standards described in § 155.305 of this part.

We also proposed that the Exchange allow an applicant who is determined eligible for advance payments of the premium tax credit to accept less than the expected annual amount of advance payments authorized. We clarified that the Exchange may provide advance payments on behalf of a tax filer only if the tax filer first attests that he or she will meet the tax-related provisions discussed in the definition of tax filer, including that he or she will claim a personal exemption deduction on his or her tax return for the applicants identified as members of his or her tax family.

We also proposed that if the Exchange determines an applicant is eligible for Medicaid or CHIP, the Exchange will notify the State Medicaid or CHIP agency and transmit relevant information, including information from the application and the results of verifications, to the relevant agency promptly and without undue delay. We also proposed that effective dates for enrollment in a QHP through the Exchange, advance payments of the premium tax credit and cost-sharing reductions be implemented in accordance with the dates specified in § 155.410(c) and (f) and § 155.420(b).

We proposed that the Exchange provide an applicant with a timely, written notice of his or her eligibility determination, including the applicant's eligibility for insurance affordability programs, as appropriate. We also proposed that when the Exchange determines an applicant is eligible to receive advance payments of the premium tax credit or cost-sharing reductions based, in part, on a finding that the applicant's employer does not provide minimum essential coverage, provides coverage that is not affordable, or provides coverage that does not meet the minimum value standard, the Exchange must notify the employer and identify the employee.

Finally, we proposed rules regarding the duration of an eligibility determination for an applicant who is determined eligible for enrollment in a QHP but does not select a QHP within his or her enrollment period in accordance with subpart E of this part. We solicited comments on whether a new determination should be conducted after a specific period of time has passed and whether the application process should begin anew in some or all situations.

Comment: We received a few comments recommending the adoption of a timeliness standard within which the Exchange would need to complete an eligibility determination. Most of these commenters recommended requiring that the Exchange adhere to the Medicaid timeliness standard as outlined in 42 CFR 435.911(a)(2), which provides that the Medicaid agency must establish a standard for determining an individual's eligibility and informing the individual of his or her eligibility determination that does not exceed 45 days.

Response: We recognize that there is a need for a timeliness standard for Exchange eligibility determinations. We add paragraph (e) which states that the Exchange must conduct an eligibility determination promptly and without undue delay. We also include that the Exchange must assess the timeliness of eligibility determinations based on the period from the date of application or transfer from an agency administering an insurance affordability program to the date the Exchange notifies the applicant of its decision or the date the Exchange transfers the application to another agency administering an insurance affordability program, when applicable. We intend to further interpret this timeliness standard in future guidance in coordination with standards established for the Medicaid and CHIP programs.

We note that we think it is reasonable that the majority of eligibility determinations will be completed in a very short period of time and encourage the Exchange to continuously monitor and identify ways to shorten the time it takes to process an application and notify an applicant of his or her eligibility determination. We plan to work closely with States to establish a more detailed understanding of the timing needed for an eligibility determination as well as how the length of time needed can be reduced, and will provide future guidance on timeliness standards.

Comment: We received a substantial number of comments in support of our proposed policy, as described in § 155.310(a)(2), that the Exchange may not require an individual who is not seeking coverage for himself or herself to provide a SSN except as provided in proposed § 155.305(f)(6) (when he or she is the tax filer and the application filer attests that the tax filer has a SSN and has filed a tax return for the year

for which the tax data would be utilized for verification of household and family size). While the majority of commenters supported the policy on the collection of SSNs, as proposed in § 155.310(a)(2) and § 155.305(f)(6), a few commenters suggested adding language to reinforce the applicability of guidance on the collection of SSNs issued on September 21, 2000 by CMS (then HCFA), the Administration of Children and Families, and the Food and Nutrition Service (the 'Tri-Agency guidance'); others asked that we cross-reference the companion provision in the Medicaid proposed regulation (42 CFR 435.907(e)(1)).

Response: First, in new § 155.310(a)(3)(i), we have clarified that the Exchange must collect a SSN from an applicant who has a SSN. We have also moved the proposed provision in § 155.310(a)(2) to § 155.310(a)(3)(ii). We clarify that this provision only provides that the Exchange must collect SSNs from a non-applicant if he or she is the tax filer, has a SSN, and has filed a tax return for the year for which tax data would be utilized. We believe this provision is necessary given the standards for determining eligibility for advance payments of the premium tax credit and cost-sharing reductions, as described in sections 1402(f)(3), 1411(b)(3) and 1412(b) of the Affordable Care Act, which provide that the most recent tax data available be the basis for determining eligibility for these benefits to the extent such tax data is available.

In addition, we note that section 36B(d)(2)(A)(ii)(II) of the Code specifies that household income for purposes of premium tax credits includes the MAGI of any individuals who have a filing requirement. As previously noted, a SSN must be used to obtain tax data from the IRS, and the IRS will not provide the tax data of a dependent who had a filing requirement without the dependent's SSN. As noted above, while the Exchange will require an individual who is seeking coverage for himself or herself who has a SSN to provide it, the Exchange will only require an individual who is not seeking coverage for himself or herself to provide a SSN if he or she is a tax filer who meets the standard described in paragraph (f)(6). That is, in the limited number of cases in which a dependent is not seeking coverage for himself or herself, the Exchange will not require such a dependent to provide his or her SSN, although the dependent may provide it on a voluntary basis. However, we believe that § 155.305(f)(6), as proposed, is permissible under section 1412, given that a) whether a dependent has a filing requirement may change frequently, resulting in a change in circumstances that allows the Exchange to use an alternate verification process; and b) we believe that it will be challenging for an applicant to determine whether a dependent was or will be required to file (versus a voluntary filing). Further, we do not believe that it is appropriate to add a provision to require the Exchange to collect the SSN for every dependent who is not seeking coverage for himself or herself, regardless of whether he or she had a filing requirement, because this would go beyond what is needed to obtain tax data for those who had a requirement to file. As such, we maintain this provision in the final rule. To the extent that a dependent who is not seeking coverage for himself or herself has income that needs to be considered for purposes of determining eligibility for advance payments of the premium tax credit and cost-sharing reductions, the Exchange will verify it through an alternate verification process.

We believe that these provisions also comply with the statutory standards contained in section 1411(g)(1) of the Affordable Care Act, which specifies that the Exchange must not require an applicant to provide information beyond what is necessary to support the eligibility and enrollment process. Given the statutory standards, we believe these are the appropriate application of the Tri-Agency guidance. We intend to continue to review these issues in the context of all insurance affordability programs and to develop a single, streamlined application that accommodates these policy and eligibility differences.

In addition, we have added § 155.315(b), which clarifies that in accordance with section 1411 of the Affordable Care Act, the Exchange will transmit SSNs to HHS for validation with SSA. This is separate from the provision regarding citizenship verification, and only serves to ensure that SSNs provided to the Exchange can be used for subsequent transactions, including for verification of family size and household income with IRS. We clarify that in accordance with section 1411(e)(3) of the Affordable Care Act, which governs inconsistencies regarding SSNs, to the extent that the Exchange is unable to validate a SSN, the Exchange will follow the inconsistency procedures specified in § 155.315(f).

Comment: We received a number of comments in support of our proposed policy to allow applicants to opt out of an eligibility determination for insurance affordability programs but to not allow applicants to choose among a subset of insurance affordability programs in proposed § 155.310(b). Only one commenter did not support the provision to allow individuals to opt out of screening for insurance affordability programs, citing that it is more important to provide a uniform eligibility determination for all applicants to increase the likelihood that individuals have access to affordable coverage options. One commenter also suggested that the final rule provide certain exceptions to the provision barring individuals from selecting among insurance affordability programs.

Response: We believe it is important to preserve the option for an applicant to bypass the examination of his or her household income and other information that may result in a lengthier eligibility process, and allow him or her to enroll directly in a QHP without financial assistance if he or she so chooses. Therefore, in the final rule, we are maintaining the provision in § 155.310(b) with some clarification; the Exchange must permit an applicant to request only an eligibility determination for enrollment in a QHP through the Exchange, but that the Exchange may not permit an applicant to request an eligibility determination for less than all insurance affordability programs. We expect that an Exchange could implement this provision by allowing an applicant to opt-out of an eligibility determination for all insurance affordability programs.

We also maintain that an applicant may not choose between insurance affordability programs since section 36B(c)(2)(B) of the Code specifies that a tax filer is ineligible for advance payments of the premium tax credit for any applicant who is eligible for other minimum essential coverage.

Comment: A number of commenters, particularly consumer groups, noted support for the provision in proposed § 155.310(d)(2), which would allow an enrollee to accept less than the full amount of advance payments of the premium tax credit for which he or she is determined eligible; however, the majority of these commenters recommended that HHS complement this provision with a standard that the Exchange must provide detailed consumer education and tools regarding the premium tax credit and reconciliation. We also received a number of comments which raised concerns that individuals may not fully understand the responsibilities associated with receiving advance payments of the premium tax credit; such commenters recommended that HHS provide more detail concerning

what information will be provided to consumers about reconciliation.

Response: We amended the final rule in § 155.310(d)(2)(ii) to state that the Exchange may authorize advance payments of the premium tax credit on behalf of a tax filer only if the Exchange obtains certain attestations regarding advance payments of the premium tax credit from a tax filer. We intend to provide further guidance regarding the additional attestations that may be asked of individuals, which may include an attestation from a tax filer acknowledging that he or she understands the potential impact of reconciliation.

Comment: We received a number of comments regarding the standards for Exchanges to notify the State Medicaid or CHIP agency upon determining an applicant eligible for Medicaid or CHIP and transmit relevant information promptly and without undue delay described in proposed § 155.310(d)(3). Commenters recommended that HHS provide a timeliness standard that is more specific than ''promptly and without undue delay,'' and suggested adding language to provide the Exchange must transmit the relevant information ''within no more than 24 hours.''

A few commenters also recommended aligning with Medicaid language to clarify that ''relevant information'' transmitted to Medicaid or CHIP agencies include ''the electronic account containing the finding of Medicaid or CHIP eligibility, all information provided on the application, and any information obtained or verified by the Exchange in making such a finding.''

Response: We considered the recommendation to adopt a specific time standard for the transmittal of information between the Exchange and State Medicaid or CHIP agencies; however, we believe that the timeliness standard in the regulation text at paragraph (e) provides the necessary flexibility to accommodate technological advances. We anticipate that we will interpret and clarify this standard in guidance. Furthermore, this standard is aligned with the Medicaid standard described in 42 CFR 435.911(c)(1); CMS also plans to issue guidance to clarify this standard.

We also considered comments asking HHS to specify the meaning of ''relevant information.'' We recognize that clarification is necessary, and in the final rule, replace the phrase ''relevant information'' in § 155.310(d)(3), with ''all information necessary to effectuate coverage in Medicaid or CHIP.'' Although this is not the identical language used in Medicaid regulations, we believe it is the appropriate standard to adequately address the concern raised by the commenter.

Comment: We received a variety of comments related to the notification of eligibility determination, described in proposed § 155.310(g). Several commenters asked that we amend the language in this provision to provide that such a notice must be ''written,'' as we specified in the proposed rule governing general notice standards in § 155.230(a). One commenter suggested adding language to allow applicants or enrollees to choose to have notices sent to other parties, such as application assisters or authorized representatives; another recommended adding a notice to individuals when an application is incomplete.

Response: Because paragraph § 155.230(a) of the proposed rule specifies that notices issued by the Exchange must be ''written,'' this general notice standard would apply to the notification of eligibility determination, which we clarify in § 155.310(g) in this final rule. We will further address notices and the roles of application assisters and authorized representatives in future rulemaking and guidance.

Comment: We received a large number of comments on proposed § 155.310(g) regarding the content and scope of employer notices of an employee's eligibility for advance payments of the premium tax credit and cost-sharing reductions. These commenters suggested that HHS limit employer notices to a subset of employers to provide greater privacy protections for consumers. Most commenters stated that the employer should be notified of an employee's receipt of advanced payment of the premium tax credit or cost-sharing reductions only if this determination might trigger an employer responsibility payment. Some commenters asserted that the appropriate trigger for an employer to receive notification is if the employer has 50 or more full time equivalent employees and the employer has full-time employees that receive advanced payment of the premium tax credit or cost-sharing reductions through the Exchange. One commenter said that only employers that offer unaffordable coverage should receive a notification and employers that offer no coverage should not receive any employee information.

Response: While we recognize that the employer responsibility provisions of section 4980H of the Code apply only to employers with 50 or more full-time equivalent employees, section 1411(e)(4)(B)(iii) of the Affordable Care Act imposes the obligation to provide the notice regardless of the size of the employer. Therefore, we are not limiting the scope of the notice standard in this final rule to a subset of employers. We anticipate that HHS may provide additional guidance regarding how the content of the notice can be structured so as to minimize potential employer confusion associated with whether a determination will have implications under section 4980H of the Code.

Further, we are aware that employer contact information may not always be available, because a person fails to provide it, or provides incorrect information, or that person changed employers, or a host of other reasons. We will work with Exchanges and employers on this to develop a solution for situations in which the Exchange does not have a seamless way to reach the correct employer for the purposes of delivering the notice.

Comment: Other commenters raised additional privacy concerns regarding the content of notices sent to employers under proposed § 155.310(g). Several commenters suggested that the Exchange provide the employer with the minimum amount information necessary to evaluate liability for the employer responsibility payment. One commenter suggested that the Exchange should only transmit information necessary under law—the employee name and taxpayer identification number. This commenter stressed that the regulation should specify that the taxpayer identification number (TIN) should be used, and not the SSN, in accordance with section 1311(d)(4)(I)) of the Affordable Care Act. One commenter suggested that even the employee name should not be disclosed. Finally, a few commenters noted that HHS should be sensitive to the fact that some employees do not want their employers to know their household income.

Response: For the purposes of the employer notice under section 1411(e)(4)(B)(iii) of the Affordable Care Act, we believe that only the minimum necessary personally identifiable information should be released to an employer. The Affordable Care Act provides that the Exchange must notify an employer that his or her employee has been determined eligible for advance payments of the premium tax credit and that the employer may appeal such eligibility determination. The proposed rule provided only that the notice identify the employee. However, based on sections 1411(e)(4)(B)(iii), 1411(e)(4)(C), and 1411(f)(2)(B) of the Affordable Care Act, our final regulation provides that if an enrollee is eligible for

a premium tax credit or cost-sharing reductions because that enrollee's employer does not provide minimum essential coverage through an eligible employer-sponsored plan, or that the employer provides coverage but it is not affordable or does not meet minimum value, the Exchange must notify the employer, identifying the employee, relating the opportunity to appeal, indicating that the employee has been determined eligible for advance payments of the premium tax credit, and indicating that the employer may be liable for a shared responsibility payment under section 4980H of the Code if the employer has 50 or more full-time workers. We note that we do not expect the Exchange to relay to the employer the exact reason for which the applicant was determined eligible, or to provide any tax return information to the employer. Rather, the notice should indicate the list (above) of potential reasons for the determination. We have amended the final rule, redesignating proposed section (g) as section (h) and adding sections (h)(2) and (h)(3) to § 155.310 to clarify these standards.

The notice will not disclose an enrollee's household income or any other taxpayer information, except the enrollee's name or other personal identifier. We anticipate that additional guidance regarding the content of the notification will be released in the future.

Comment: One commenter expressed concern about potential HIPAA violations that may occur if an applicant provides the wrong employer contact information, and an incorrect employer receives the notification, with respect to the notices sent in accordance with proposed § 155.310(g).

Response: To the extent the Exchange is not a HIPAA covered entity or business associate, the Exchange would be subject only to the privacy and security standards of 155.260. If a State has determined that its Exchange is a HIPAA covered entity or business associate, to the extent the Exchange was merely acting on incorrect information provided to the Exchange by an applicant, there would be no HIPAA violation. In addition, we do not expect that the notice will result in a violation of applicable privacy and security standards in this section. We acknowledge that the notices outlined under this section will contain personally identifiable information, such as the name of enrollees. However, we think any inadvertent disclosure would be mitigated by the fact that only minimal information about the individual will be included in the employer notice; thus, we do not believe that this standard poses a substantial threat to individual privacy. In addition, we plan to disseminate guidance to Exchanges on practices designed to minimize the instances of individuals or entities other than the enrollee's actual employer receiving the notice.

Comment: A number of commenters asked that Exchanges inform employers that retaliation based on the notices sent in accordance with § 155.310(g) is prohibited and that evidence of retaliation could subject the employer to a penalty.

Response: We note that section 1558 of the Affordable Care Act, which amends the Fair Labor Standards Act and is within the jurisdiction of the Department of Labor, includes a prohibition on an employer discharging or discriminating against an employee because the employee has received a premium tax credit or cost-sharing reductions. Because of this statutory provision, we do not believe additional standards are necessary in this final rule.

Comment: One commenter suggested that IRS, and not HHS, effectuate the notice described in § 155.310(h) because (1) IRS has information about employers subject to free rider assessments, and (2) IRS maintains a database of employer contacts for the transmission of sensitive personal information. Another commenter suggested that reporting to employers should be consolidated and centralized into a Federal process, with information provided on a monthly or quarterly basis.

Response: Section 1411(e)(4)(B)(iii) provides that this notice must be provided to employers by Exchanges in connection with certain eligibility determinations. It is not within the discretion of the Secretary to shift responsibility for provision of this notice to the IRS. We do support reducing reporting burden by consolidating and streamlining reporting, if feasible. In addition, we plan to issue guidance to help Exchanges develop an operational strategy for reporting.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.310 of the proposed rule, with a few modifications. In paragraph (b), we clarified that the choice of an applicant is whether to allow the Exchange to determine his or her eligibility for insurance affordability programs. In paragraph (d)(2)(ii), we added language specifying that attestations from the tax filer will be attestations regarding advance payments of the premium tax credits. In paragraph (d)(3), we removed the reference to ''relevant'' information and further clarified that the Exchange must transmit all information from the records of the Exchange promptly and without undue delay to such agency that is necessary for the State Medicaid or CHIP agency to provide the applicant with coverage. In paragraph (e), we adopted a provision which provides that the Exchange must conduct eligibility determinations promptly and without undue delay.

In paragraph (f), we clarified in the header that the effective dates outlined are effective dates for eligibility, and not for coverage. Consistent with changes we discuss in § 155.420, we also added language in paragraphs (f)(1) and (f)(2) to differentiate between effective dates for initial eligibility determinations, which will be implemented in accordance with § 155.410(c) and (f) and § 155.420(b), as applicable, and effective dates for redeterminations, which will be implemented in accordance with the dates specified in § 155.330(f) and 155.335(i), as applicable. In paragraph (g), we added language to specify that the notice of eligibility determination must be written, consistent with other notice standards. We redesignated proposed paragraph (g) as new paragraph (h). In new paragraph (h), we added three additional standards, in accordance with section 1411(e)(4) of the Affordable Care Act, for the content of the notice to employers. In addition to identifying the employee, the notice must indicate that the employee has been determined eligible for advance payments of the premium tax credit; that, if the employer has 50 or more full-time employees, the employer may be liable for the payment assessed under section 4980H of the Code; and that the employer has the right to appeal the determination.

Also included in this final rule are several technical corrections from the proposed text. In paragraph (a)(1), we removed the reference to 45 CFR and changed the phrase to ''specified in § 155.405 of this chapter.'' In paragraph (b), we added the words ''insurance affordability'' before ''programs'' as a clarification.

e. Verification Process Related to Eligibility for Enrollment in a QHP (§ 155.315)

Based on comments and feedback to the proposed rule, we are revising the rule to include paragraph (g) of this section as an interim final provision, and we are seeking comments on it.

In § 155.315, we proposed the general standard that the Exchange must verify or obtain information to determine that an applicant is eligible for enrollment in

a QHP, unless a request for modification is granted in accordance with proposed paragraph (f) of this section.

To verify whether an applicant for coverage through the Exchange is a citizen, national, or otherwise lawfully present individual in accordance with section 1312(f)(3) of the Affordable Care Act, we proposed to codify the role of the Secretary (through HHS) as an intermediary between the Exchange and other Federal officials, specifically the Social Security Administration and the Department of Homeland Security. In the case of an inconsistency related to citizenship, status as a national, or lawful presence, we proposed that the time period for the resolution is 90 days from the date on which the notice of inconsistency is received. We also clarified that the date on which the notice is received means 5 days after the date on the notice, unless the applicant shows that he or she did not receive the notice within the 5 day period.

We also proposed that the Exchange verify an applicant's residency by accepting an applicant's attestation without further verification or following the procedures of the State Medicaid or CHIP agency, if such agency examines electronic data sources for all applicants. We also proposed that the Exchange may examine data sources regarding residency to the extent that information provided by an applicant regarding residency is not reasonably compatible with other information provided by the applicant or in the records of the Exchange. In addition, we proposed that a document that provides evidence of immigration status may not be used alone to determine State residency. We also proposed that the Exchange verify an applicant's attestation that he or she is not incarcerated. We solicited comment as to what electronic data sources are available and should be authorized by HHS for Exchange purposes, including whether access to such data sources should be provided as a Federally-managed service like citizenship and immigration status information from SSA and DHS.

Further, we proposed that when an individual attests to information and such attestation is inconsistent with other data in the records of the Exchange, the Exchange must make a reasonable effort to identify and resolve the issues. If the Exchange is unable to resolve the inconsistencies, we proposed that the Exchange notify the applicant of the inconsistency. After providing this notice, we proposed that the Exchange provide 90 days from the date on which the notice is sent for the applicant to resolve the issues, either with the Exchange or with the agency or office that maintains the data source that is inconsistent with the attestation. We also proposed that the period during which an applicant may resolve the inconsistency may be extended by the Exchange if the applicant can provide evidence that a good faith effort has been made to obtain additional documentation.

We further proposed that the Exchange allow an individual who is otherwise eligible for enrollment in a QHP, advance payments of the premium tax credit or cost-sharing reductions to receive such coverage and financial assistance during the resolution period, provided that the tax filer attests to the Exchange that he or she understands that any advance payments of the premium tax credit received during the resolution period are subject to reconciliation. We also proposed that if after the conclusion of the resolution period, the Exchange is unable to verify the applicant's attestation, the Exchange must determine the applicant's eligibility based on the information available from the data sources specified in this subpart and notify the applicant of such determination. We clarified that the Exchange must make effective this eligibility determination no earlier than 10 days after and no later than 30 days after the date on which such notice is sent.

Finally, we also proposed that HHS may approve an Exchange Blueprint to change the methods used to collect and verify information, within certain standards. We also proposed that the Exchange must not require an applicant to provide information beyond the minimum necessary to support eligibility and enrollment processes.

Comment: We received a few comments asking that we establish standards for the collection, use and safeguarding of data used to verify applicant information, as described throughout proposed § 155.315. We received a few comments suggesting that we incorporate specific safeguards and protections for information used in the verification of citizenship and immigration status, proposed in § 155.315(b). Commenters suggested including language stating that information related to the verification of citizenship and immigration status be used only for purpose of verifying eligibility for enrollment in a QHP and that pending such verification, coverage should not be delayed, denied, reduced or terminated.

Response: We address the privacy and security of information and the specific standards and protocols for the transmission of data in § 155.260 and § 155.270 of this final rule and note that these provisions apply to the transactions described throughout subpart D, including § 155.315. Language in § 155.260 provides that information must provided to or obtained by the Exchange for the purposes of determining eligibility for enrollment in a QHP, advance payments of the premium tax credit, and cost-sharing reductions, under sections 1411(b) through (e) of the Affordable Care Act, or exemptions from the individual responsibility provisions in section 5000A of the Code, may only be used to carry out those minimum functions of the Exchange described in § 155.200; we believe this language addresses these concerns and establishes appropriate safeguards.

Regarding comments asking that coverage not be delayed, denied, reduced or terminated, pending verification of citizenship and immigration status, we addressed these concerns in § 155.315(f), which allows an applicant to enroll in coverage with financial assistance pending such verification. We also amend § 155.315(c) in order to be consistent throughout this subpart and clarify that an applicant and not an application filer receives the notice of inconsistency.

Comment: A number of comments addressed the process for resolving inconsistencies between applicant information and data obtained by the Exchange, as proposed in § 155.315(e). Commenters requested that we provide details on the types of documentation that the Exchange may use to verify applicant information; specifically, commenters asked for details on documents that the Exchange will be permitted to use in verifying citizenship and immigration status. Other commenters asked that we clarify the ways in which individuals will be able to submit documentation to the Exchange when attempting to resolve such inconsistencies. Furthermore, in response to the Medicaid eligibility proposed rule, HHS received a number of comments requesting adoption of an exception for agencies administering insurance affordability programs to accept attestations alone from certain applicants, who are part of at-risk populations and who may not have access to necessary documentation to resolve inconsistencies.

Response: While we acknowledge commenters' requests for details regarding documentation used during the inconsistency process, we believe that this level of specificity is most appropriate for guidance. Therefore, we maintain that the applicant may ''present satisfactory evidence'' in

§ 155.315(f)(2)(ii) of the final rule. We intend to issue future guidance with details on documents which may be used to support verification, in coordination with Medicaid and CHIP and in accordance with the statutory standard for the Exchange to follow the procedures specified in section 1902(ee) of the Act.

We accept commenters' suggestions that we specify the ways in which an applicant will be able to submit documentation to the Exchange; accordingly, we adopt language in the final rule at § 155.315(f)(2)(ii) that the Exchange must provide the applicant with the opportunity to present satisfactory documentary evidence via the channels available for the submission of an application, as described in § 155.405, except for by telephone.

We also proposed a provision in § 155.315(g) to provide a case-by-case exception for applicants for whom documentation does not exist or is not reasonably available. We proposed this language to account for situations which documentation cannot be obtained, and to achieve consistency with the Medicaid program; examples of individuals for whom this provision may apply include homeless individuals, victims of domestic violence or natural disasters, and sporadic earners. We believe that adding this provision is permissible within the Secretary's statutory authority to change verification methods as provided under sections 1411(c)(4) and 1321(a)(1) of the Affordable Care Act. We note also that if at the conclusion of the 90 day period, the Exchange is unable to verify the applicant's attestation and the data from the data sources specified in § 155.315 are unavailable, the Exchange must notify that applicant that the Exchange finds the applicant ineligible for the eligibility standard in question. In § 155.320(c)(3)(vi)(F), we also describe the procedures for the Exchange to discontinue advance payments and cost-sharing reductions in the event that the applicant's attestation is not verified by the conclusion of the 90 day period.

We also make several changes throughout verification provisions of the final rule at § 155.315 and § 155.320 where information is found by the Exchange to be not reasonably compatible with an applicant's attestation and where the inconsistency process is triggered; we change the language in a number of places to state that the Exchange ''must,'' rather than ''may,'' examine electronic data sources or supporting documentation, when applicable. The proposed rule did not consistently require that the Exchange examine other data sources or documentary evidence for all verification processes.

Comment: We received several comments regarding our use throughout § 155.315 of the term ''reasonably compatible.'' Many commenters asked that we define the term and provided a number of suggested definitions; one common approach to clarifying the term was to provide the Exchange must only consider material differences between an attestation and available electronic data as not reasonably compatible.

Response: We believe that the common approach suggested by commenters is a sensible one, and in § 155.300(d) of this final rule, provide that the Exchange must consider information to be reasonably compatible with an applicant's attestation if the difference or discrepancy does not have an impact on the eligibility of the applicant, including the amount of advance payments of the premium tax credit or category of cost-sharing reductions. This provision would provide, for example, that if an individual attested to one address within an Exchange service area, but Exchange-obtained data demonstrated a different address within the same Exchange service area, he or she must be considered to meet the residency eligibility standard. We note that while we provide this clarification in the final rule, Exchanges may still exercise flexibility in defining what is considered reasonably compatible. We expect that definitions will vary depending on the types of information subject to verification, and that States will use this flexibility to enhance the eligibility process. We intend to provide future guidance on this issue. We also clarify that to the extent that income information provided by an application filer and income information obtained through electronic data sources both indicate that the applicant is eligible for Medicaid or CHIP, such information must be considered reasonably compatible; this provision aligns with the provision of the Medicaid eligibility final rule at 42 CFR 435.952(c)(1). We also clarify that this rule does not mean that an applicant's attestation regarding annual household income must be identical to that of the tax return information in order to be considered reasonably compatible. The standard for household income is discussed in more detail in § 155.320.

Comment: We received a few comments which asked that we explicitly state that an applicant has the ability to access and amend the data used to determine his or her eligibility.

Response: Section 155.330 of the proposed rule allowed an enrollee to report changes affecting his or her eligibility to the Exchange, which must then be verified by the Exchange. We maintain this provision in this final rule. We anticipate that the Exchange will make the information used in an eligibility determination available to the applicant and enrollee, including through a web-based self-service tool with appropriate safeguards. In addition, we direct the commenter to the final rule at § 155.260(b)(3)(i), which provides the Exchange must incorporate a principle of individual access to personally identifiable information as part of the Exchange's privacy and security policies and procedures.

Comment: We received comments asking that we specify the content of the eligibility determination notice provided to applicants, which is described in proposed § 155.315(e)(2)(i). Commenters also suggested certain content standards for such a notice, including clear procedures for the inconsistency process.

Response: As noted in the notice of proposed rulemaking, we intend to provide content and timing standards for notices in future rulemaking and guidance. We have made a minor edit to the final rule at § 155.315(f)(2)(i) to clarify that this notice is sent to the applicant by the Exchange.

Comment: We received a number of comments regarding the process to resolve inconsistencies, as described in proposed § 155.315(b)(3) and (e). A few comments asked that the inconsistency periods described in proposed § 155.315(b)(3) and (e) begin when the application is submitted, not when the notice of inconsistency is sent or received by the applicant. Other commenters asked that we align inconsistency periods for the Exchange with the inconsistency period described in section 1902(ee) of the Act.

Response: Section 1411(e)(3) of the Affordable Care Act states that for inconsistencies related to citizenship and immigration status, the Exchange must follow procedures described in section 1902(ee) of the Act. Section 1902(ee) provides that the applicant must be given a period of 90 days from the date of the receipt of the notice to present satisfactory documentation. Because such a receipt date is difficult to pinpoint, we have adopted language specifying that the date on which the notice is received is 5 days from the date the notice is sent, unless the applicant demonstrates that he or she did not receive the notice within the 5 day period. This standard is also utilized by the SSA. Alternatively, for

inconsistencies not related to citizenship and immigration status, section 1411(e)(4)(A)(ii)(II) of the Affordable Care Act provides that the 90 day period must begin on the date on which the notice is sent to the applicant. Due to these statutory standards, we are unable to change the point at which the inconsistency period is triggered, and unable to further align the provision in proposed § 155.315(e) with the process described in section 1902(ee) of the Act. Therefore, we maintain the provisions in § 155.315(c)(3) and (f) in the final rule.

We neglected to include the statutory language found in section 1411(e)(4)(A)(i) of the Affordable Care Act which provides that the Exchange must address ''typographical or clerical errors'' in order to address causes of inconsistencies, prior to accepting documentation or other evidence from the applicant; we adopt this language in the final rule at § 155.315(f)(1).

Comment: We received a number of comments which expressed concern over the potential for increased liability for QHP issuers as applicants are provided coverage during the inconsistency period described in proposed § 155.315(e). We also received comments suggesting that issuers should not be required to enroll, nor continue enrollment of, individuals for whom the Exchange is still verifying eligibility during the resolution period.

Response: The standard to determine eligibility based on the information on the application (that is, an individual's attestation) during the inconsistency period is specified in section 1411(e)(3) and (e)(4) of the Affordable Care Act. We note that this final rule does not prohibit QHPs from requiring premium payment prior to providing coverage. We also expect that the Exchange and an applicant's selected QHP issuer will provide notice to an applicant to ensure that the enrollee is aware of liability for premium payment.

Comment: One commenter suggested that the Exchange be given more flexibility to decrease the length of the inconsistency period.

Response: The period of time during which an applicant is permitted to provide documentation in order to resolve an inconsistency is specified in sections 1411(e)(3) and 1411(e)(4)(A)(ii)(II) of the Affordable Care Act; therefore, we maintain provisions § 155.315(c)(3) and (f)(2)(ii) the final rule.

Comment: A few commenters asked that we explicitly allow certain application assisters, Navigators, and application filers to help applicants navigate the inconsistency process, described in proposed § 155.315(e).

Response: As described in § 155.210, part of the duties of a Navigator will be to educate the consumer, facilitate enrollment, and assist with any part of the application process. We also anticipate that agents and brokers will provide such assistance. In addition, we expect that application assisters who are not Navigators, agents, or brokers will provide support for consumers during the application process, and we anticipate providing additional guidance regarding this role, including on appropriate privacy and security protections.

Comment: We received a number of comments on proposed § 155.315(e)(3), in which we proposed that the Exchange may extend the inconsistency period if the applicant demonstrates a good faith effort to obtain the documentation. Commenters asked that the Exchange must provide such an extension.

Response: We adopted the provision regarding the extension of the inconsistency period in order to align with Medicaid guidance, which provides States the flexibility to allow a good faith extension. Therefore, we are maintaining the proposed text in the final rule.

Comment: We received a comment asking that we include timeliness standards for processing inconsistencies.

Response: We adopt a timeliness standard of ''promptly and without undue delay'' for eligibility determinations made by the Exchange in the final rule at § 155.310(e), but intend to provide future guidance about best practices for an Exchange to make the best use of the 90 day inconsistency period.

Comment: We received a number of comments on proposed § 155.315(g), in which we proposed that the Exchange may not require the applicant to provide information beyond the minimum necessary to support the eligibility and enrollment process. Commenters asked us to define ''minimum necessary''; others suggested that we include language describing how HHS will conduct oversight to ensure compliance with this provision.

Response: We acknowledge the importance of oversight to ensure compliance with the provision described in § 155.315(g) of the proposed rule, which is finalized in § 155.315(i), and intend to provide additional detail regarding oversight in future rulemaking and guidance. HHS will also consider this in the context of evaluating alternate applications developed by States, as described in § 155.405(b), and will continue to work with States on the issue of information collection.

Comment: We received a number of comments related to the proposed process for verification of citizenship and immigration status, described in proposed § 155.315(b). A few commenters found the process unclear, and asked for more information regarding the verification process for other individuals listed on the application, such as spouses and tax dependents.

We also received a number of comments related to the services that will be provided by a Federally–managed data services hub to support verification of citizenship and immigration status. Several comments recommended that we utilize the DHS Systematic Alien Verification for Entitlements (SAVE) system to verify immigration status. Comments on the proposed rule asked for information on the impact of services available through the Federally-managed data services hub on existing State agency connections with Federal data sources used for verification of citizenship and immigration status. Commenters recommended that Exchanges not use ''E-verify'' to verify immigration status and others asked that we provide details on the format of data provided to the State agency or Exchange. We also received comments asking whether it would be legally permissible for the Exchange to transmit information to DHS, via HHS, when an individual has attested to being a citizen. Another commenter asked how the Exchange will know whether an individual has documentation at the point of application that can be verified through DHS, as described in the provision proposed at § 155.315(b)(2).

Response: Section 1312(f)(3) of the Affordable Care Act, as codified in § 155.305(a)(1) in this final rule, states that an individual may only enroll in a QHP through the Exchange if he or she is a citizen, national, or a non-citizen who is lawfully present, and is reasonably expected to be so for the entire period for which enrollment is sought. Because citizenship, status as a national, or lawful presence is an eligibility standard for any applicant seeking coverage through the Exchange for him or herself, the verification process described in § 155.315(c) applies to each applicant, regardless of whether he or she is a tax filer or dependent.

While we do not specify a level of operational detail in the final rule that includes the specific services or data

formats which will be used in supporting verification, we are working closely with our Federal partners to develop and provide details on the verification services provided by the Federally-managed data services hub; we expect to provide such details in guidance. However, we believe that the final rule supports the use of SAVE. We also note that we do not intend to use the E-verify service, as it is designed for employers to check the work authorization of employees, rather than to verify eligibility for benefits. Regarding existing State connections used in verification, we anticipate that Medicaid agencies, CHIP agencies, and Exchanges will leverage the Federally-managed data services hub for connections to SSA and DHS to support verification of citizenship and immigration status.

With regard to the Exchange transmitting information to DHS via HHS, when an individual has attested to being a citizen, section 1411(c)(2) of the Affordable Care Act specifies that in such cases when an individual who attests that he or she is a citizen but for whom citizenship cannot be verified through SSA, the Secretary of HHS shall submit to DHS the applicant's information and other identifying information for verification of immigration status. Based on this statutory standard, we maintain § 155.315(b)(2) in the final rule as § 155.315(c)(2).

Lastly, we intend to work with DHS to provide Exchanges with the information needed to identify whether an applicant can likely be matched through DHS. DHS has existing verification relationships with many State Medicaid and CHIP agencies, as well as other Federal, State, and Local government entities, which means that many States will already be familiar with this information.

Comment: We received several comments recommending the inclusion of language in proposed § 155.315(b) describing the verification process as to whether an applicant is ''reasonably expected'' to be lawfully present for the entire period for which enrollment is sought. The ''reasonably expected'' standard is part of the standard for determining whether an applicant is a citizen, national or non-citizen who is lawfully present, which is described in § 155.305(a)(1). Commenters' specific recommendations for such a verification process varied. One requested that as long as an applicant's residency is verified, that he or she be considered reasonably expected to be lawfully present for the entire period for which enrollment is sought. Others suggested that self-attestation alone be used in verification.

Response: In the final rule, we address our interpretation of the term ''reasonably expected'' in § 155.305. We intend to provide additional interpretation of this standard, including how it applies in specific scenarios, in future guidance.

Comment: We received a few comments asking that we specify in regulation that an applicant is permitted to provide his or her A-number for verification of immigration status through the records of DHS.

Response: In § 155.315(b), we proposed that for purposes of verifying citizenship and immigration status through the records of DHS, the Exchange must transmit information from the applicant's documentation and other identifying information to HHS. We intend the phrase ''information from the applicant's documentation and other identifying information'' to encompass information such as A-numbers; therefore, we maintain the provision in the final rule. This approach incorporates other types of identifying information (for example, I–94 numbers) that are used by DHS, as well as preserves the intent and applicable of this regulation if DHS changes its process in the future.

Comment: We received a number of comments regarding the connections between the Exchange and Federal data sources needed to support verification of applicant information. Comments expressed concern that each Exchange would need to develop separate data sharing arrangements and interfaces with Federal agencies maintaining information for use in verification. Comments responding to the proposed rule, which identified HHS as a conduit for information transmitted between the Exchange and Federal agencies, asked that we specifically refer to the Federally-managed data services hub, or electronic service, throughout § 155.315, rather than refer to HHS as the entity through which data will be transmitted.

Response: Acknowledging comments to the RFC and specific direction from section 1411(c) of the Affordable Care Act, we proposed that HHS would be the entity through which information would be transmitted to and from Exchanges and Federal data sources to support the verification process. In the final rule, we maintain HHS' role in supporting verification. However, in order to remain flexible to the technology used to transmit such data, we do not specifically mention in the final rule the ''electronic service'' or ''data services hub''. Instead, the final rule focuses on HHS' role as the entity which will facilitate the transfer of information, rather than how such information will be transferred. We anticipate that as technological advances are made, there may be changes in the procedures used by HHS to receive information from the Exchange and to communicate with other Federal agencies involved in the verification process.

Comment: We received a number of comments on the process for verification of residency, proposed in § 155.315(c). A significant number of commenters asked that self-attestation of residency be accepted without further verification. A smaller number of commenters recommended always allowing the Exchange to verify residency through electronic data sources, not only when the State Medicaid or CHIP agency operating in the State of the Exchange opts to examine such data sources.

Response: We are redesignating proposed § 155.315(c) as § 155.315(d), and amending it to state that an Exchange may accept an attestation of residency from an applicant or examine electronic data sources which have been approved by HHS. This flexibility would allow an Exchange, should it choose, to align with the verification procedures of the State Medicaid or CHIP agency. Such alignment may facilitate integration across insurance affordability programs and result in a more streamlined process. We amend § 155.315(d)(3), as well as equivalent provisions throughout this subpart, to specify that if the Exchange finds that information provided by an applicant is not reasonably compatible, it must examine any information available through other electronic data sources. The proposed rule was inconsistent, and used, ''may,'' instead of, ''must,'' in this paragraph and in several other areas. This change was made to create consistency throughout the subpart, and because the rationale for the reasonably compatible concept, as described in the proposed rule, is that it is a threshold for when additional verification (for example, examining other electronic data sources) is necessary to complete the verification process. For example, in the event the Exchange accepts self-attestation without further verification, in accordance with paragraph (d)(1), and such attestation is found to be not reasonably compatible with other information provided by the individual or in the records of the Exchange, the Exchange would continue the verification process by examining available electronic data sources in order to verify the attestation. If the Exchange is still unable to complete the

verification after examining information in electronic data sources, the Exchange would then follow procedures to resolve the inconsistency, in accordance with § 155.315(f). As discussed in the proposed rule, examining data sources, when available, prior to moving through the inconsistency process will help minimize the need to request paper documentation from applicants, and the burden for Exchanges to process such documentation.

Comment: We received a few comments regarding the provision in proposed § 155.315(c)(4) in which we propose that a document that provides evidence of immigration status may not be used alone to determine State residency. A commenter requested that we remove the word ''alone'' from this phrase. Another asked that we allow the Exchange to use documentation of immigration status to positively verify residency.

Response: We are removing the word ''alone'' from § 155.315(d)(4) in the final rule because we do not intend for documents that provide evidence of immigration status to be used to determine State residency either alone or together with other documentation. We have also amended the phrase to allow the Exchange to positively verify residency using immigration documentation, which aligns with Medicaid regulations.

Comment: We received a number of comments regarding the verification of incarceration status, as proposed in § 155.315(d). Several commenters recommended that self-attestation of incarceration be accepted without further verification. Others believed that information or an attestation regarding incarceration should never be requested of an applicant, since such a request may be a deterrent to consumers applying for coverage through the Exchange. A smaller number of commenters questioned the availability of recent, accurate data with which Exchanges may verify incarceration status. One commenter stated that by not defining ''release date,'' incarceration status will be difficult to verify.

Response: We acknowledge that there are challenges regarding the availability of electronic data on incarceration. However, we believe it is important for the Exchange to utilize any such data sources that are available and have been approved by HHS for this purpose, and, at the very least, accept self-attestations of incarceration status since such status is a statutory standard for eligibility to enroll in a QHP. In addition, we believe that this attestation can be collected with minimal burden on an applicant, and we expect that it will be paired with a clear explanation as to why the information is being requested. We believe that allowing for verification of incarceration status through paper documentation would increase administrative burden on the Exchange and applicants, and for these reasons, allow for the examination of paper documentation only in the event that the applicant's self-attestation is not reasonably compatible with other information provided by the individual or information in the records of the Exchange. For greater detail about the definition of incarceration, please see comment response for § 155.300.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.315 of the proposed rule, with the following modifications. We added paragraph (b), which clarifies that the Exchange will validate SSNs that are provided by individuals. In paragraph (c)(3), we changed the word ''shows'' to ''demonstrates'' in referring to what the applicant must do if the if he or she did not receive the notice within the 5 day period; this change was made to more accurately describe the obligation of the applicant. In paragraph (d)(1) and (2), we allowed the Exchange may choose whether it accepts an attestation from applicants regarding residency without further verification or examines electronic data sources for all applicants, and we clarify that the standard for approval of electronic data sources for verification of residency will be based on whether such sources are sufficiently current and accurate, and minimize administrative costs and burdens.

In paragraph (d)(3), we clarify that by referring to data sources, we mean those data sources that are available to the Exchange and that have been approved by HHS for this purpose. In paragraph (d)(3), we remove the reference to ''a document that provides'' before ''evidence'' so as not to limit the acceptable types of such evidence. We also remove the word ''alone'' in order to clarify that the Exchange may not use evidence of immigration status alone or together with other evidence to determine State residency. In paragraph (d)(3), we also change the term ''may'' to ''must'' to specify that if the applicant's attestation is not reasonably compatible with information in the records of the Exchange, the Exchange must examine available, approved data sources in order to verify the attestation. We also change the phrase in paragraph (d)(4) to state that evidence of immigration status may not be used to determine that an applicant is not resident of the Exchange service area.

We clarified in paragraph (f) that an inconsistency may result when electronic data is necessary for verification but is not available. We also included in paragraph (f)(1), ''including through typographical or other clerical errors'' to describe the causes of inconsistency. In paragraph (f)(2)(i), we changed ''notify'' to ''provide notice to the applicant regarding'' in order to clarify the Exchange's notice standard. Also, we added language to paragraph (f)(2)(ii) to specify that all channels described in § 155.405(c) of this part are acceptable for the submission of documentation to resolve inconsistencies, except for by telephone. In paragraph (f)(5)(i), we specify that the Exchange must determine the applicant's eligibility based on the information available unless such applicant qualifies for the exception provided under paragraph (g). We also add, on an interim final basis, paragraph (g), which provides a case-by-case approach to resolving inconsistencies for applicants for whom documentation does not exist or is not reasonably available.

We also made technical corrections. We redesignated paragraphs (b) through (g) as paragraphs (c) through (i). In paragraph (a), we changed the reference to paragraph (e) to paragraph (g). In paragraph (d), we changed ''by'' to ''as follows,'' and changed verb tenses in (d)(1) and (d)(2). In paragraph (f)(3), we corrected the reference to paragraph (f)(3) and changed it to (f)(2)(ii). In paragraph (f)(5)(ii), we changed the word ''implement'' to ''effectuate.'' We also add, on an interim final basis, paragraph (g) to provide a case-by-case exception for applicants for whom documentation does not exist or is not reasonably available.

In paragraph (h), we changed the word ''plan'' to ''Blueprint.'' Throughout the section, as in the rest of the subpart, we replaced language regarding application filers providing attestations with references to applicants providing attestations, since the language in § 155.300(c) provides overarching clarification that attestations for applicants can be provided by application filers.

f. Verification process related to eligibility for insurance affordability programs (§ 155.320)

In § 155.320, we proposed that the Exchange verify information in accordance with this section only for an applicant who is requesting an eligibility determination for insurance affordability programs.

We proposed standards related to the verification of eligibility for minimum essential coverage other than through an eligible employer-sponsored plan.

We also proposed standards for the verification of household income and family and family/household size and solicited comments regarding how best to ensure a streamlined eligibility process given underlying differences between the Treasury proposed rule and the Medicaid proposed rule. We proposed standards for the Exchange to obtain tax return data for individuals whose income is counted in calculating a tax filer's household income, and to obtain MAGI-based income for all individuals whose income is counted in calculating a tax filer's household income, in accordance with 26 CFR 1.36B–1(e), or an applicant's household income, in accordance with 42 CFR 435.603(d).

We proposed the verification process for income and household size for Medicaid and CHIP and solicited comments as to how this process could work most smoothly for both electronic and paper applications. We proposed that the Exchange must verify household size by obtaining an attestation from the application filer and accepting the attestation without further verification unless the attestation is not reasonably compatible with other information in the records of the Exchange. We also proposed the process for the Exchange to verify MAGI-based household income by referring to the procedures described in Medicaid proposed regulations at 42 CFR 435.948 and 42 CFR 435.952 and CHIP regulations at 42 CFR 457.380. We solicited comments as to how the Exchange process and the Medicaid and CHIP processes can be streamlined to ensure consistency and maximize the portion of eligibility determinations that can be completed in a single session.

Similar to Medicaid and CHIP, we proposed that for advance payments of the premium tax credit and cost-sharing reductions, the Exchange direct an application filer to attest to the specific individuals who comprise an applicant's family for advance payments of the premium tax credit and cost-sharing reductions, and that the Exchange accept an application filer's attestation of family size without further verification, unless the attestation and any other information in the records of the Exchange are not reasonably compatible. We further proposed the basic verification process for annual household income. We proposed that the Exchange compute, in accordance with specific rules for Medicaid and CHIP and specific rules for eligibility for advance payments of premium tax credits and cost-sharing reductions, annual household income for the family defined by the application filer and that the application filer validate this information by attesting whether it represents an accurate projection of the family's household income for the benefit year for which coverage is requested. We proposed that if tax data are unavailable, or if an application filer attests that the Exchange's computation based on available tax data does not represent an accurate projection of the family's household income for the benefit year for which coverage is requested, the Exchange direct the application filer to attest to the family's projected household income. We proposed that if such an attestation is not reasonably compatible with the data obtained by the Exchange or if the data is unavailable, the Exchange must follow procedures for the alternate verification process. We also proposed that the Exchange use an alternate process for determining income for purposes of advance payments of the premium tax credit and cost-sharing reductions for tax filers in certain situations. We proposed that in situations in which an application filer attests that a tax filer's annual household income has increased or is reasonably expected to increase from the information obtained from his or her tax return, the Exchange accept the application filer's attestation without further verification, with limited exceptions. We also proposed to codify the minimum standards for circumstances under which an application filer who is attesting to a decrease in income for a tax filer, or is attesting to income because tax return data is unavailable, may utilize an alternate income verification process that includes annualized data from MAGI-based income sources and other electronic data sources approved by HHS. We solicited comment on what situations should justify use of the alternate process.

We also proposed the verification process the Exchange must follow for a tax filer whose annual household income decreases by a certain amount. We proposed that if the Exchange requests additional documentation to resolve an inconsistency and the application filer has not responded to a request for additional information from the Exchange within a 90 day period and data sources indicate that an applicant in the tax filer's family is eligible for Medicaid or CHIP, the Exchange may not provide the applicant with eligibility for advance payments of the premium tax credit or cost-sharing reductions. We proposed that if at the end of the 90 day period the Exchange is unable to verify the application filer's attestation, the Exchange must determine the applicant's eligibility based on available data, in accordance with the process proposed in § 155.310(g) and § 155.330(f). In addition to the above standards, we proposed that the Exchange provide education and assistance to an application filer regarding the verification process for income and family/household size and solicited comments on strategies that the Exchange can employ to ensure that application filers understand the validation process and provide well-informed validations and attestations.

For other situations in which the Exchange remains unable to verify an application filer's attestation, we proposed that the Exchange determine eligibility for advance payments of the premium tax credit and cost-sharing reductions for tax filers who do not meet the criteria for the alternate income verification process based on the tax filer's tax data. We also proposed that if an application filer does not respond to a request for additional information from the Exchange and data sources described in paragraph (c)(1) indicate that an applicant in the primary tax filer's family is eligible for Medicaid or CHIP, the Exchange will not provide the applicant with eligibility for advance payments of the premium tax credit or cost-sharing reductions based on the application.

We proposed that the Exchange verify whether an applicant who requested an eligibility determination for advance payments of the premium tax credit or cost-sharing reductions is enrolled in an eligible employer-sponsored plan by accepting his or her attestation without further verification, except in cases in which information is not reasonably compatible with other data provided by the applicant or in the records of the Exchange. We solicited comments as to whether the Exchange could assume that an applicant would understand whether or not he or she is enrolled in an eligible employer-sponsored plan, and therefore rely upon applicant attestation in this area. We proposed that the Exchange may request additional information regarding whether an applicant is enrolled in an eligible employer-sponsored plan if an applicant's attestation is where an applicant's information is not reasonably compatible with other information provided by the applicant or in the records of the Exchange. We solicited comments regarding the best

data sources for this element of the process.

In addition, we proposed that the Exchange must request from an applicant who requests an eligibility determination for advance payments of the premium tax credit or cost-sharing reductions to attest to his or her eligibility for qualifying coverage in an eligible employer-sponsored plan. We further proposed that the Exchange verify this information. We solicited comments regarding how the Exchange may handle a situation in which it is unable to gain access to authoritative information regarding an applicant's eligibility for qualifying coverage in an eligible employer-sponsored plan. We invited comment on the timing and reporting of information needed to verify whether an employed applicant is eligible for qualifying coverage in an eligible employer-sponsored plan, and the best methods for facilitating interaction among Exchanges for this purpose. Specifically, we solicited comment regarding two specific methods for the submission and collection of information regarding eligibility for qualifying coverage in an eligible employer-sponsored plan—the employee template and the employer central database.

Comment: Many commenters questioned the criteria for using the alternative verification process to verify household income; in particular, commenters argued against the standard proposed § 155.320(c)(3)(iv) that limits the ability of the Exchange to follow the alternative verification process to situations in which tax data is not available, family size or filing status has changed or is reasonably expected to change, an applicant has filed for unemployment benefits, or when an application filer attests that the tax filer's annual household income has decreased or is reasonably expected to decrease from tax data obtained by the Exchange by 20 percent or more. Comments focused on the 20 percent threshold, which commenters believed was too high, particularly given the relatively low incomes of the population likely to request an eligibility determination for financial assistance, and would thus result in a substantial group of tax filers being unable to obtain advance payments of the premium tax credit commensurate with their household income, regardless of whether they were able to substantiate a lower income. Commenters supported a percentage threshold lower than 20 percent or a different measure altogether.

Response: We recognize that utilizing the 20 percent minimum would result in a substantial number of tax filers who are unable to afford coverage due to significant changes in income and that we should modify our proposed rule so that an eligibility determination matches, as closely as possible, a tax filer's true circumstances. We note that section 1412(b)(2) of the Affordable Care Act describes that the Secretary must provide procedures for making eligibility determinations for advance payments of the premium tax credit, ''in cases where information included with an application demonstrates substantial changes in income * * * or other significant changes affecting eligibility''. The statute outlines a minimum set of circumstances that meet this standard; we interpret the statutory 20 percent or more decrease as congressional direction that any decrease of that magnitude must trigger an alternate verification process, but not to limit the Secretary's discretion to identify other significant changes in income that trigger an alternate verification process. We codified this provision in the proposed rule at § 155.320(c)(3)(iv), along with the other minimum standards, and solicited comments as to whether this was an appropriate standard, or whether we should establish a different threshold.

Based on an analysis performed by the Secretary,[5] a family of four with household income of 200 percent of the FPL ($47,018 using projected 2014 figures) is projected to have a total premium, after advance payments, of $247 per month. A five percent decrease in income from $47,018 is $44,667 (190 percent of the FPL), would correspond to a total premium, after advance payments, of $217 per month, for a total difference in premium of around $360 per year. In addition, while advance payments are sensitive to every dollar of income, cost-sharing reductions are not; consequently, even very small changes that move a person across a threshold (150 percent FPL, 200 percent FPL, or 250 percent FPL) can be very significant. For example, based on the same figures cited above, the difference in cost-sharing between a family at 190 percent FPL and a family at 200 percent FPL is $1,000 per year, due to the change in eligibility for cost-sharing reductions at 200 percent FPL. The difference is $2,000 around 250 percent FPL, which is the upper limit for cost-sharing reductions based solely on household income. We believe that these are significant changes, which will be critical to recognize in order to ensure that eligible individuals can afford coverage.

Therefore, in this final rule, we specify that the Exchange must use information other than tax data to verify income in cases in which an applicant attests that a change has occurred or is reasonably expected to occur, and as such, a tax filer's annual household income has decreased or is reasonably expected to decrease from his or her tax data. As noted above, we believe that any change in household income constitutes a change in circumstances that meets the ''significant changes affecting eligibility'' standard identified in section 1412(b)(2) of the Affordable Care Act, given the sensitivity of the advance payment formula and the potential for large variations in cost-sharing reductions with small shifts in income. This approach to implementing section 1412(b)(2) is further reinforced by the fact that requiring the Exchange to conduct an individualized analysis as to whether each tax filer's circumstances constitute a ''significant change'' in accordance with the statute would place a substantial administrative burden on the Exchange; to conduct such case-by-case analyses, the Exchange would need to apply different procedures to subgroups of tax filers, specifically around cost-sharing reduction thresholds. Overall, we believe that using this standard will increase the accuracy of income verification, the accuracy of eligibility determinations, and the equity of the process for tax filers without significantly increasing the administrative burden on the Exchange.

We also make a change to another criterion for the alternate verification process described in § 155.320(c)(3)(iv)(B); we include that when an applicant attests that members of the tax filer's family have changed or are reasonably expected to change, he or she qualifies for an alternate verification process. We add this provision in order to account for a situation in which the family members are different but the number of family members remains the same.

In § 155.320(c)(3)(v), we describe the alternate verification process for decreases in household income or situations in which tax data are unavailable. We move the language from § 155.320(c)(3)(ii)(C) of the proposed rule, which specified that the Exchange accept an applicant's attestation of projected annual household income, unless it was not reasonably compatible with tax data, to this section, and replace ''reasonably compatible'' with a standard of a decrease of ten percent or less from the tax data. We redesignate

[5] *http://www.healthcare.gov/law/resources/reports/premiums01282011a.pdf.*

§ 155.320(c)(3)(v) of the proposed rule as § 155.320(c)(3)(vi), which specifies the verification process for larger decreases and situations in which tax data are unavailable. Taken together, these revisions address commenters' concerns regarding inequities in the proposed verification process by ensuring that there are procedures under which a tax filer can obtain advance payments of the premium tax credit commensurate with their household income when changes have occurred or are reasonably expected to occur, regardless of the size of any such changes.

Comment: We received many comments recommending that HHS further define the term ''reasonably compatible'', as used throughout proposed § 155.320(c) as the standard for assessing whether verification can be considered complete, or if additional information is necessary. Commenters suggested various approaches to establishing a more detailed standard, including, in the case of income, the use of an acceptable percentage of deviation between the amount reflected by the data and an application filer's attestation. Others recommended that the Exchange should consider an application filer's attestation to income reasonably compatible with electronic data even if there is a difference in the data and an application filer's attestation, as long as the difference does not significantly impact eligibility. Some commenters recommended that Exchanges maximize the use of self-attestation without further verification, which would speak to setting the ''reasonably compatible'' threshold at a higher level. Other commenters requested that HHS establish a standard that allows for flexibility in implementation, and a few commenters recommended removing the ''reasonably compatible'' standard altogether. A few commenters recommended providing that the Exchange must always request additional evidence with the goal of achieving a more accurate projection of income or family size.

Response: When assessing comments recommending that HHS define the ''reasonably compatible'' standard proposed in § 155.320(c), we weighed our desire for Exchange flexibility with the goal of providing greater consistency in income verification for applicants across Exchanges and a more streamlined process, in order to reduce burden for applicants and Exchanges. However, based on the comments received, we recognize that there is a need to define a specific threshold within which the Exchange would accept an applicant's attestation regarding projected annual household income, as opposed to engaging in a more burdensome process. Accordingly, as discussed in the previous response, the final rule specifies that the Exchange will accept an applicant's attestation to projected annual household income without further verification if it is no more than ten percent below his or her tax data. We believe that using this threshold will result in eligibility determinations that are accurate while limiting the administrative burden associated with completing additional verification processes for smaller decreases in income. We believe that this is particularly important given the age of available tax return information at the point of open enrollment, as well as the volatility in income among households that are likely to request an eligibility determination for insurance affordability programs. In particular, we believe that it is critical to focus the limited resources of Exchanges on ensuring that larger changes are subjected to additional scrutiny.

In addition, we clarify that the process proposed in § 155.320(c)(3)(i) for verification of family size for purposes of eligibility for advance payments of the premium tax credit and cost-sharing reductions follows the process specified in section 1411 of the Affordable Care Act, which specifies that the Secretary verify family size with the Secretary of the Treasury, and then implement alternative procedures to the extent that a change has occurred or tax data are unavailable.

First, in paragraph (c)(1)(i)(A), the Exchange will request tax return data including data regarding family size. In paragraph (c)(3)(i)(A), we specify that an applicant will attest to the individuals that comprise an applicant's family for advance payments of the premium tax credit and cost-sharing reductions. We add paragraph (c)(3)(i)(B) to clarify that if an applicant attests that tax data represents an accurate projection of a tax filer's family size for the benefit year for which coverage is requested (that is, that no change has occurred or is reasonably expected to occur), the Exchange must use the family size information from the tax data to determine the tax filer's eligibility for advance payments of the premium tax credit and cost-sharing reductions. And in paragraph (c)(3)(i)(C), we specify that if tax data are unavailable, or an applicant attests that a change has occurred or is reasonably expected to occur, and as such, it does not represent an accurate projection of a tax filer's family size for the benefit year for which coverage is requested, the Exchange must accept his or her attestation to family size without further verification, unless it is not reasonably compatible with other information provided by the applicant or in the records of the Exchange.

In paragraph (c)(3)(i)(C), we clarify that the assessment of reasonable compatibility is not with respect to the tax data, as paragraph (c)(3)(i)(C) is designed to address situations in which it is already clear that tax data are unavailable or not representative. We then maintain the provisions from the proposed rule specifying that if information regarding family size is not reasonably compatible, the Exchange must first utilize data obtained through other electronic data sources, and if that is unsuccessful, follow the inconsistency process in § 155.315(f).

Comment: We received comments suggesting that HHS clarify aspects of the income verification process in proposed § 155.320; in particular, commenters asked that the final rule specify the sequencing of the process, so that a clear order for the execution of steps for Medicaid, CHIP, and advance payments of the premium tax credit and cost-sharing reductions is established. Commenters also asked that HHS allow Exchanges greater flexibility around the use of electronic data to verify household income. For example, one commenter recommended that in the event an applicant's current income data places them well below the income level for eligibility for advance payments of the premium tax credit or cost-sharing reductions, the Exchange not be required to also obtain the applicant's tax return data. Others questioned the overall usefulness of available tax return data given its age, and asked that Exchanges be permitted to look only at available current income data sources to verify household income for all insurance affordability programs.

Response: We acknowledge commenters' desire to further streamline and simplify the eligibility and enrollment process by avoiding unnecessary steps to verify applicant information. Sections 1402(f)(3), 1411(b)(3) and 1412(b)(1) of the Affordable Care Act provide that data from the most recent tax return information available must be the basis for determining eligibility for advance payments of the premium tax credit and cost-sharing reductions to the extent such tax data is available. HHS is working closely with Treasury and IRS to ensure that such data is readily accessible by the Exchange, to assist in facilitating the completion of an eligibility determination in a single, online session. We believe that the regulation is not the place to lay out

detailed, sequenced steps for verifying household income. As such, in § 155.320(c)(3)(ii), we have made changes to allow the Exchange flexibility when sequencing the verification of annual household income; we altered the text such that the Exchange may present the applicant with his or her projected annual household income computed from the tax return information prior to requiring an attestation from the applicant or, in the alternative, to allow the Exchange to take an attestation from the applicant regarding a tax filer's projected annual household income and then verify whether the attestation is supported by the tax return information described in § 155.320(c)(3)(i). Overall, we intend for the regulation to be neutral with regard to the sequencing of operations, and will provide such operational details through guidance.

Comment: Commenters asked HHS to clarify whether, when verifying annual household income as described in proposed § 155.320, the Exchange must rely on a tax filer's attestation to make a final determination of household income when the attestation and tax data are reasonably compatible, or whether the Exchange must rely on tax data.

Response: We acknowledge commenters' concerns that the proposed regulation text at § 155.320(c)(3)(ii) does not clearly describe the process the Exchange must follow in the event that the applicant attests that the income in the tax data represents an accurate projection of the household's projected annual household income. In this final rule, we include a provision in § 155.320(c)(3)(ii)(B) which describes that, in this situation, the Exchange must determine the tax filer's eligibility for advance payments of the premium tax credit and cost-sharing reductions based on the income data from his or her tax return.

Comment: A few commenters asked for clarification as to when it is appropriate to accept self-attestation of income. We also received comments asking for clarification on our use of self-attestations throughout the verification processes described in § 155.315 and § 155.320.

Response: The Exchange may accept an applicant's attestation of her or her projected annual household income in a number of instances during the income verification process; however, it is important to note, that for purposes of verification of income for determining eligibility for advance payments of the premium tax credit and cost-sharing reductions, the Exchange will never accept such an attestation without attempting to acquire tax data.Those instances in which the Exchange may accept an attestation without further verification when an application attests that as a result of a change or an expected change, a tax filer's income has increased, by any amount, above the projected annual household income calculated by the Exchange based on tax data, as described in § 155.320(c)(3)(iii); and when an applicant attests that as a result of a change or an expected change, a tax filer's projected annual household income has decreased or is reasonably expected to decrease from the projected annual household income calculated based on tax data by ten percent or less, as described in § 155.320(c)(3)(v).

In response to comments regarding the use of self-attestation in the verification process, the processes described are designed to confirm information to the extent necessary to provide eligibility. In situations in which the Exchange uses self-attestation without further verification as the basis of eligibility, we have determined that this approach yields valid data and does not pose unacceptable levels of risk. We believe that this approach is particularly important in order to promote a seamless, real-time experience for as many applicants as possible. It is also important to note that strong program integrity protections will be in place and that all attestations will be provided under penalty of perjury.

Comment: We received comments asking which procedures the Exchange must follow when an individual's unverified income meets the Medicaid or CHIP income threshold.

Response: As indicated in § 155.320(c)(2)(ii) of the proposed rule, if an individual's unverified current income meets the Medicaid or CHIP income threshold, the Exchange would verify his or her household income in accordance with Medicaid or CHIP rules specified in 42 CFR 435.948 and 42 CFR 435.952. Similarly, if an individual attests to income in the Medicaid or CHIP eligibility range, the Exchange would need to follow the procedures outlined in 42 CFR 435.948 and 42 CFR 435.952, since such individual would not be eligible for the alternative verification process, as indicated in § 155.320(c)(3)(iv). We maintain these provisions in this final rule.

Comment: We received several comments requesting greater integration and alignment in standards and processes for verifying family/household size and household income across insurance affordability programs. Some asked for States to be given flexibility to align standards across insurance affordability programs. Commenters also recommended specific changes facilitating a closer alignment of the rules for determining family/household size and household income between Medicaid, CHIP and advance payments of the premium tax credit and cost-sharing reductions. Some recommended full integration, utilizing identical standards across insurance affordability programs.

Response: Throughout § 155.320(c), the standards for verification of family size and income for determining eligibility for advance payments of the premium tax credit and cost-sharing reductions closely follow the rules set forth in sections 1411 and 1412 of the Affordable Care Act and section 36B of the Code. We sought to align as closely as possible with the standards established for Medicaid and CHIP, but given statutory standards, we were limited in the degree of alignment we could achieve.

With respect to family/household income and household size, we note that Medicaid/CHIP and advance payments both start with the family size and income counting rules in section 36B of the Code. From there, there are three key differences in how income must be measured in Medicaid/CHIP and for advance payments and cost-sharing reductions. First, as noted in the proposed rule, section 1902(e)(14)(H) of the Social Security Act, as added by section 2002 of the Affordable Care Act, specifies that Medicaid eligibility will continue to be based on ''point-in-time'', or current monthly income, while eligibility for advance payments of the premium tax credit and cost-sharing reductions is based on annual income. This is reflected in 42 CFR 435.603(h)(1). Second, 42 CFR 435.603(b) and (f) specifies that in certain situations, Medicaid and CHIP follow different household composition rules from those in section 36B of the Code, which then lead to counting income for a different group than would be counted for advance payments of the premium tax credit and cost-sharing reductions. These situations are discussed in detail in the preamble associated with 42 CFR 435.603.

Third, 42 CFR 435.603(e) specifies that there are some exceptions to the use of the income counting rules of section 36B of the Code for purposes of eligibility for Medicaid and CHIP. These include special treatment for lump sum payments, scholarships, awards, or fellowship grants used for educational purposes and not for living expenses, and certain types of American Indian and Alaska Native income.

Aside from the different time standard, in the majority of cases, the rules for counting household income and household/family size are the same across insurance affordability programs. In addition, we note that 42 CFR 435.603(i) specifies that in a situation in which an applicant is over the income threshold for Medicaid, but is under the income threshold for advance payments of the premium tax credit, the Medicaid agency will determine Medicaid eligibility using section 36B rules, which would likely result in Medicaid eligibility in most situations. We have also added an additional provision in § 155.345(e), which is discussed in the comment and response associated with that section.

Lastly, we note that throughout subpart D, we use ''household size'' for purposes of Medicaid and CHIP, in order to align with Medicaid and CHIP regulations, and ''family size'' for purposes of advance payments of the premium tax credit and cost-sharing reductions, in order to align with Treasury regulations. To clarify this, we added § 155.320(c)(3)(viii), which specifies that for purposes of advance payments of the premium tax credit and cost-sharing reductions, ''family size'' means family size as defined in section 36B(d)(1) of the Code.

Comment: We received a number of comments related to current income sources to be used by the Exchange in verifying household income. Commenters asked us to define those current income sources that the Exchange will use in the process proposed in § 155.320(c)(1)(ii). Others asked whether current income information would be available via the Federally-managed data services hub.

Response: Under § 155.320(c)(1)(ii) of the proposed and this final rule, the Exchange must obtain the most current income data from those data sources described in existing Medicaid regulations at 42 CFR 435.948(a). In order to access this current income data, we anticipate that the Exchange will leverage State Medicaid and CHIP agencies' existing relationships with current income sources, but we are also exploring the potential for supporting connections to sources of current income data through the data services hub.

Comment: Several commenters had specific questions related to services available to support the income verification process through the data services hub. Specifically, commenters asked which data elements from the tax return would be available from the IRS via the data services hub, and recommended that individual data elements (for example, wages, profit and loss from business, deductions) would be more useful in verifying household income than a single MAGI data element.

Response: We are working to identify those services which will be available to Exchanges to support the income verification process and will provide further detail in future guidance. We note that the section 6103(l)(21) of the Code identifies general categories of tax data that will be available for purposes of determining eligibility in insurance affordability programs. In addition, these categories are discussed in the response to question 8 in HHS' November 29, 2011 document titled ''State Exchange Implementation Questions and Answers''.[6]

Comment: We received comments related to the treatment of American Indian and Alaska Native income. Some asked whether current State arrangements around the treatment of such income will be allowed to stand under the Exchange; others asked that the exemption for American Indian and Alaska Native income be referenced in the Exchange final rule and that materials be available to consumers so they can understand the availability of such exemptions.

Response: In § 155.320(c)(1)(ii) of the proposed rule, we reference 42 CFR 435.603(d) for purposes of income eligibility for Medicaid, which incorporates the applicable income exemptions for American Indians and Alaska Natives described under 42 CFR 435.603(e)(3). This regulatory reference addresses the treatment of these exemptions and the future of existing arrangements with regard to American Indian and Alaska Native income with respect to Medicaid. We note that these income exemptions do not apply when verifying annual household income for advance payments of the premium tax credit and cost-sharing reductions, because the Affordable Care Act establishes specific definitions of ''household income'' and ''MAGI'' to use for determining eligibility for these benefits. Because of the statutory limits on the definition of household income for advance payment of premium tax credits and cost-sharing reductions, this final rule maintains the proposal to follow the rules described in section 36B of the Code.

Comment: We received a comment recommending that HHS clarify that, for purposes of obtaining data regarding MAGI-based income for purposes of Medicaid and CHIP eligibility, the Exchange will initially request data from data sources described in 42 CFR 435.948(a), not from the applicant.

Response: The specific sequencing of the process for collecting and verifying relevant information is subject to future operational analysis, and that we anticipate providing future guidance on this topic, including through the model electronic application.

Comment: We received a number of comments related to proposed § 155.320(c)(4), which provides that the Exchange must provide education and assistance to an application filer regarding the family/household size and household income verification process. Several commenters suggested specific standards for the format and content of consumer education and assistance materials. Some commenters asked that a Federal standard for such materials be developed for Exchanges, and others advised that HHS encourage Exchanges to provide information specific to the alternative income verification process to ensure a smooth verification process.

Response: There are several provisions throughout this final rule which provides that the Exchange must provide consumer tools and education related to the eligibility and enrollment process, in addition to the standard described in § 155.320(c)(4), including a calculator and other tools, described in § 155.205, and information regarding advance payments of the premium tax credit, described in § 155.310(d)(2)(iii). We expect to issue future guidance on this topic.

Comment: We received comments asking if the Exchange would have access to all child support data; and if so, suggesting that the Exchange must abide by specific data safeguards.

Response: The Exchange would not be required to have access to child support data for purposes of verifying annual household income. Regardless, for data collected by the Exchange, privacy and security protections, described in § 155.260 of this final rule, and standards for electronic transactions, described in § 155.270 of this final rule, would also apply.

Comment: Several commenters supported the proposal in § 155.320(d) for the Exchange to utilize self-attestation by the employee to verify enrollment in an eligible employer-sponsored plan. One commenter stated that HHS should give States the flexibility to use self-attestation or to use other methods of verification.

Response: We accept these comments and maintain this provision in the final rule. Section 1411(d) gives authority to the Secretary to determine the appropriate means to verify certain

[6] *http://cciio.cms.gov/resources/files/Files2/11282011/exchange_q_and_a.pdf.pdf.*

information that the applicant must submit in accordance with section 1411(b)(4). We note that § 155.315(h) of this subpart allows State flexibility, subject to approval by HHS, based on a finding that the alternative approach meets certain standards described in that section.

Comment: Several commenters asserted that individuals enrolled in continuation coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA) or in an eligible employer-sponsored plan should have the opportunity to be conditionally determined eligible for advance payments of the premium tax credit and cost-sharing reductions, subject to termination prior to enrollment in a QHP. These commenters reasoned that individuals should not be forced into uninsured status in order to obtain a determination of eligibility for tax credits and risk remaining uninsured if they are found ineligible and the enrollment period for electing COBRA or coverage in an eligible employer-sponsored plan passes.

Response: Section 36B(c)(2)(C)(iii) of the Code states that an individual who is enrolled in an eligible employer-sponsored plan is not eligible for advance payments of the premium tax credit; because of the statutory prohibition on providing cost-sharing reductions for any month that is not a month for which the enrollee is eligible for premium tax credits, this bar also applies to eligibility for cost-sharing reductions. However, while an individual must terminate coverage in his or her employer-sponsored plan prior to the period for which he or she actually receives advance payments of the premium tax credit and/or cost-sharing reductions, we clarify that the individual need not terminate coverage to receive an eligibility determination that he or she is eligible to receive these payments and reductions. Accordingly, we have amended the language in § 155.320(d)(1) of this final rule to clarify that an attestation regarding enrollment in qualifying coverage in an eligible employer-sponsored plan should be based on the applicant's reasonable expectation of enrollment in the benefit year for which coverage is requested.

Comment: One commenter noted that the language in proposed § 155.320(d) seems to indicate that the decision whether or not the Exchange must verify beyond an applicant's attestation regarding enrollment in an eligible employer-sponsored plan is within the discretion of an Exchange, and requested clarification regarding whether this was an intentional wording.

Response: We have amended the regulatory text to reflect the standard that an Exchange must verify an applicant's attestation using electronic data sources to the extent that an applicant's attestation is not reasonably compatible with other information provided by the applicant or in the records of the Exchange.

This change is consistent with equivalent amendments made in this subpart, and provides that, if the Exchange finds that information provided by an applicant is not reasonably compatible, it must examine any information available through electronic data sources. As discussed in the proposed rule, examining data sources, when available, will help minimize the need to request paper documentation from applicants, and the burden for Exchanges to process such documentation. A more detailed explanation of the change from ''may'' to ''must'' can be found in the comment and response to § 155.315. We also plan to release guidance for States regarding electronic data sources to support this verification.

Comment: Commenters suggested a variety of operational solutions for carrying out the verification of an applicant's eligibility for and/or enrollment in an eligible employer-sponsored plan. These comments were largely in response to the accompanying preamble discussion regarding the two potential data sources an Exchange may use to support this verification—the employer/employee template and the central database. Several commenters expressed support for or against the template and central database options. A large group consisting of consumer advocacy groups, a labor union and a think tank expressed support for the standard template option. Each of these commenters added that employees should not be required to provide information regarding minimum value because this information is not readily accessible to employees. One commenter requested that HHS provide that employers must submit information regarding eligibility for and enrollment in employer-sponsored plans to Exchanges on an annual basis. One commenter said HHS should provide States with the option to develop algorithms to determine who can be expected to have access to qualifying coverage in an eligible employer-sponsored plan using the size of the applicant's employer and industry type instead of creating a new database. Commenters also supported the goal of leveraging existing data sources for the purposes of verifying eligibility for qualifying coverage in an eligible employer-sponsored plan. One commenter said that HHS should give States the flexibility to verify eligibility for qualifying coverage in an eligible employer-sponsored plan using already-existing data. One commenter stated that HHS should have employee W–2 forms available as a verification source.

Response: We continue to consult with the Departments of Labor and Treasury regarding the optimal solution for gathering information for the purposes of verification of eligibility for qualifying coverage in an eligible employer-sponsored plan and will issue guidance on this topic. Both the template and database options we described in the proposed rule are being considered as operational solutions. We are also considering ways in which an individual could gather information from his or her employer for the purposes of this verification. A combination of these methods could provide the most accurate and reliable results, while gathering information from both of the relevant information sources—employees and employers. We are also considering additional options in which employees seeking coverage could provide other sources of documentation from his or her employer that could verify eligibility. We plan to issue guidance outlining one or more possible methods for comment that will help guide the collection of information necessary to verify eligibility for qualifying coverage in an eligible employer-sponsored plan. However, it should be noted that any database option may rely on voluntary submission of information regarding employee eligibility for qualifying employer-sponsored coverage by employers. Further, HHS acknowledges that building the functionality required to collect and retain information regarding employer-sponsored insurance coverage will be time and resource-intensive, and is therefore is considering options for an interim approach for verification of eligibility for qualifying coverage in an eligible employer-sponsored plan. We plan to describe these interim options in forthcoming guidance. We also note that it is anticipated that initial guidance under 6103(l)(21) of the Code will not provide for sharing the contents of an applicant's Form W–2 with the Exchange.

Comment: Some commenters said the Federal government should perform verification of eligibility for qualifying coverage in an eligible employer-sponsored plan as a service to States. These commenters cited limitations on

the ability of States to perform this verification. One commenter said that States with no individual income tax, specifically, would have difficulty making affordability determinations.

Response: In the State Exchange Implementation Questions and Answers released on November 29, 2011, we indicated that we are exploring how the Federal government could manage services for verification of employer-sponsored minimum essential coverage. We note, though, that we do not believe that the absence of an individual State income tax return poses an obstacle to computing affordability, since the income verification process in § 155.320(c)(3) of this final rule does not require the use of State income tax information.

Comment: One commenter stated that, in the case of an inconsistency between an applicant's attestation and internal Exchange records, the burden to produce further documentation should be on the employee, not the employer.

Response: We believe our proposed regulation followed the commenter's recommendation because the employee is the applicant. Section 155.315(f)(2)(ii) of this final rule describes that an applicant must provide further documentation if the applicant's attestation is inconsistent with other information sources.

Comment: One commenter requested that HHS must establish two distinct processes for the determination of eligibility for advance payments of the premium tax credit by Exchanges under proposed § 155.320 and for the assessment of employer penalties by the Treasury.

Response: The statute makes clear that the two processes are distinct. Under sections 1411 and 1412 of the Affordable Care Act, the Exchange will make eligibility determinations for advance payments of the premium tax credit and cost-sharing reductions, notify employers that a payment may be assessed and that the employer has a right to appeal to the Exchange, and provide information to the Treasury. The assessment of shared responsibility payments under section 4980H of the Code is within the jurisdiction of the Treasury.

Comment: One commenter concurred with the language of § 155.320 of the Exchange Eligibility proposed rule, which provides that the Exchange must verify information for only those applicants seeking eligibility determinations for insurance affordability programs in order to minimize multiple employer interactions with the Exchange.

Response: Verification of eligibility for qualifying coverage in an eligible employer-sponsored plan is necessary only when indicated as necessary in accordance with the statute. An Exchange is not required to verify eligibility for qualifying coverage in an eligible employer-sponsored plan for an applicant who did not request an eligibility determination for all insurance affordability programs.

Comment: One commenter asserted that HHS should declare that all employer-sponsored insurance offered to American Indians and Alaska Natives fails the affordability and minimum value standards. The commenter reasoned that information regarding affordability and minimum value will be difficult for this type of applicant to provide. In addition, the commenter stated that if an individual is eligible to receive services through the Indian Health Service (IHS), including eligibility for services from an IHS facility, or for services from a tribe or tribal organization, or Urban Indian Organization, the Exchange should not attempt to verify an attestation regarding eligibility for qualifying coverage in an eligible employer-sponsored plan because this population is exempt from the standard to maintain minimum essential coverage.

Response: While we recognize that certain data elements requested from applicants for the purposes of this verification may be challenging to obtain, we believe that a wholesale exception for American Indians and Alaska Natives is not warranted or permissible under the statute, and are not providing for such an exception in this final rule.

Comment: One commenter requested clarification on the issue of full-time employment and its relationship to eligibility for qualifying coverage in an eligible employer-sponsored plan. Specifically, the commenter asked whether full-time status will be requested during the verification process, whether the Exchange will consider it when making eligibility determinations for advance payments of the premium tax credit, and whether the affordability test depends on whether the applicant is a full-time employee. In addition, the commenter requested clarification regarding notification and how an Exchange should manage eligibility determinations for applicants with multiple employers.

Response: Section 1411(b)(4)(B) of the Affordable Care Act specifies that an applicant must provide information including, ''whether the enrollee or individual is a full-time employee.'' With that said, the affordability test and the determination of whether an applicant is eligible to receive advance payments of the premium tax credit and/or cost-sharing reductions is not dependent on the full-time status of the employee. Rather, this information is relevant for Treasury's determination as to whether a shared responsibility payment under section 4980H of the Code applies to an employer. Also, we note that in the case of an applicant who has more than one employer, the Exchange will evaluate information from existing data sources regarding all of the applicant's employers to determine eligibility for qualifying coverage in an eligible employer-sponsored plan.

Comment: One commenter requested clarification regarding whether the Exchange will use tax data to ensure affordability of coverage for employees under proposed § 155.320. The commenters asked whether the employer may use wage data, instead of household income data, in its affordability determination.

Response: The Exchange will use the projected annual household income verified through the process described in § 155.320(c)(3) of this final rule to compute the affordability of available coverage through an eligible employer-sponsored plan. The question of whether an employer may use wage data in determining whether its offered coverage meets affordability criteria is beyond the scope of this rule, and is within the authority of the Department of the Treasury. In September 2011, the Department of the Treasury released IRS Notice 2011–73 (2011–40 I.R.B. 474) requesting comments on a potential safe harbor permitting employers to use an employee's W–2 wages in determining the affordability of employer-sponsored minimum essential coverage for purpose of the employer shared responsibility provisions under Code section 4980H. In February 2012, the Department of the Treasury released Notice 2012–17 (issued jointly with HHS and the Department of Labor) confirming that it intends to issue proposed regulations or other guidance providing for this safe harbor.[7]

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.320 of the proposed rule, with the following modifications. In paragraph (c)(2)(i)(A), we adopted new language to describe the verification of household size for

[7] Frequently Asked Questions from Employers Regarding Automatic Enrollment, Employer Shared Responsibility, and Waiting Periods. February 9, 2012: *http://www.dol.gov/ebsa/newsroom/tr12–01.html.*

Medicaid and CHIP, in order to align with the Medicaid Eligibility final rule. We redesignated paragraph (c)(3)(i)(B) as paragraph (c)(3)(i)(C), and added paragraph (c)(3)(i)(B), which clarifies that if an applicant attests that tax data represents an accurate projection of a tax filer's family size for the benefit year for which coverage is requested, the Exchange must use the family size information from the tax data to determine the tax filer's eligibility for advance payments of the premium tax credit and cost-sharing reductions. We also added paragraphs (c)(3)(i)(C) and (D), which clarifies that this paragraph applies when tax data are unavailable or when a change has occurred or is reasonably expected to occur such that the data does not represent an accurate projection of family size; and clarifies that the assessment of reasonable compatibility is with respect to data other than that from the tax return.

We also make a technical change to § 155.320(c)(2)(i)(B) to state that the Exchange ''must,'' rather than ''may,'' examine electronic data sources if information is found to be not reasonably compatible. This change was made in order to align with verification of other applicant information, and so that in the event the Exchange accepts an applicant's attestation without further verification but such attestation is not reasonably compatible with other information provided by the application filer or contained in the records of the Exchange, the Exchange must examine available data sources to verify the attestation. If the information in the data sources cannot be used to verify the attestation, the Exchange must request additional documentation in accordance with Medicaid regulations at 42 CFR 435.952. This change was also made in order to align with changes made to the Medicaid regulations regarding verification of household size.

We redesignated paragraph (c)(3)(ii)(B) as paragraph (c)(3)(ii)(C), and removed the phrase ''is requested and accept the application filer's attestation without further verification, except as provided in paragraph (c)(3)(ii)(C) of this section'' in order to clarify that the Exchange must proceed in accordance with the procedures in paragraph (c)(3)(ii)(C) after receiving such an attestation.

We also added paragraph (c)(3)(ii)(B), which provides that the Exchange must request the applicant to attest regarding his or her projected annual household income. We have also added paragraph (c)(3)(ii)(C) which clarifies that if an applicant's attestation indicates that the tax data represents an accurate projection of a family's household income for the benefit year for which coverage is requested, the Exchange must use the household income information from the tax data to determine his or her eligibility for advance payments of the premium tax credit and cost-sharing reductions. In paragraph (c)(3)(iii)(B), we changed the term ''may'' to ''must'' to specify that if the Exchange finds that information provided by an applicant is not reasonably compatible, it must examine any information available through other electronic data sources. In paragraph (c)(3)(iv)(A), we replaced the phrase ''this is as a result of an individual not being required to file'' with ''an individual was not required to file.'' In paragraph (c)(3)(iv)(B), we added that the alternate verification process is also available for a tax filer whose family composition has changed or is reasonably expected to change; we also added the phrase ''or members of the tax filer's family have changed or are reasonably expected to change.'' In paragraph (c)(3)(iv)(C), we removed, ''by more than 20 percent,'' and clarified that this criterion is based on an applicant's attestation that a change has occurred or is reasonably expected to occur. We added a paragraph (c)(3)(iv)(D) to allow a tax filer to qualify for the alternative verification process if the applicant attests that the tax filer's filing status has changed or is reasonably expected to change for the benefit year for which the applicants in his or her family are requesting coverage. Omitting this provision from the proposed rule was an oversight; this basis for use of an alternate income determination process is authorized in section 1412(b)(2) of the Affordable Care Act.

We removed proposed paragraph (c)(3)(vi); given changes made to this section of the regulation, this paragraph was no longer necessary. We redesignated proposed paragraph (c)(3)(v) as paragraph (c)(3)(vi), and added a new paragraph (c)(3)(v). In paragraph (c)(3)(v) of the final rule, we specified that if a tax filer qualifies for an alternate verification process and the applicant's attestation to projected annual household income is no more than ten percent below the annual household income computed from tax data, the Exchange must accept his or her attestation without further verification. In revised paragraph (c)(3)(vi), we specified that the process in proposed paragraph (c)(3)(vi) applies if a tax filer qualifies for an alternate verification process and the applicant's attestation to projected annual household income is greater than ten percent below the annual household income computed from tax data, or if tax data are unavailable.

In paragraph (c)(3)(vi)(C), we clarified a reference to § 155.315(f) to include paragraphs (f)(1)–(4), which includes the 90 day period during which an individual may either present satisfactory documentary evidence or otherwise resolve the inconsistency. We also added paragraph (c)(3)(vi)(F), to describe that if, at the end of the 90 day period the Exchange is unable to verify the applicant's attestation and the tax data described in (c)(3)(ii)(A) is unavailable, the Exchange must notify that applicant and discontinue the advance payments and cost-sharing reductions. We added this paragraph in order to explicitly describe the procedures the Exchange must follow when there is no data on which to rely at the conclusion of the 90 day period.

We also added paragraphs (c)(3)(vii) and (c)(3)(viii), which clarify that the terms ''household income'' and ''family size'' in paragraph (c)(3) mean household income as specified in section 36B(d)(2) of the Code, and family size as specified in section 36B(d)(1) of the Code, respectively. To clarify the process for verifying eligibility for qualifying coverage in an eligible employer-sponsored plan tracks, we amended paragraph (d)(1) to state that the Exchange must also verify whether an applicant reasonably expects to be enrolled in an eligible employer-sponsored plan for the benefit year for which coverage is requested. We amended paragraph (d)(2) by changing ''may'' to ''must'', which provides that an Exchange must obtain data from electronic data sources to verify an applicant's attestation that he or she is not enrolled in an eligible employer-sponsored plan when an applicant's attestation is not reasonably compatible with other information provided by the applicant or in the records of the Exchange. We also added the word ''electronic'' in paragraph (d)(2) to create consistency with equivalent provisions in the subpart.

We made several technical corrections. In paragraph (a)(2), we also changed the reference in § 155.315 from paragraph (e) to (h). In paragraphs (c)(3)(i)(C) and (c)(3)(ii)(C), we clarified that when an applicant attests that tax return data is not representative of family size or household income for the benefit year for which coverage is requested, it is as a result of a change in circumstances, which aligns with section 1412 of the Affordable Care Act. In paragraph (c)(3)(iii)(A), we added ''in accordance with paragraph (c)(3)(ii)(B). Proposed paragraph (c)(3)(iv)(D) was

redesignated as paragraph (c)(3)(iv)(E). In paragraph (c)(3)(vi)(E), we renumbered the reference to § 155.310(f) to § 155.310(g), and the reference to § 155.330(e)(1) through (e)(2) to § 155.330(f). Throughout paragraph (c)(3), we changed references to ensure that the paragraph consistently referred to the tax filer for verification of household income for purposes of advance payments of the premium tax credit and cost-sharing reductions, in order to align with the eligibility standards. We made several changes to paragraph (f) to align with the Medicaid final rule. In paragraph (c)(2)(i)(A), we changed references to the Medicaid Eligibility final rule to account for renumbering. We also added the reference to 42 CFR 435.945 to paragraph (c)(2)(ii). Throughout the section, as in the rest of the subpart, we replaced language regarding application filers providing attestations with references to applicants providing attestations, since the language in § 155.300(c) provides overarching clarification that attestations for applicants can be provided by application filers.

g. Eligibility Redetermination During a Benefit Year (§ 155.330)

In § 155.330, we outlined procedures for redeterminations during a benefit year. We proposed to rely primarily on the enrollee to provide the Exchange with updated information during the benefit year, and solicited comments as to whether there should be an ongoing role for Exchange-initiated data matching beyond what was proposed in the proposed rule. We also solicited comments on whether the Exchange should offer an enrollee an option to be periodically reminded to report any changes that have occurred.

We proposed that the Exchange redetermine the eligibility of an enrollee in a QHP during the benefit year in two situations: first, if an enrollee reports updated information and the Exchange verifies it; and second, if the Exchange identifies updated information through limited data matching to identify individuals who have died or gained eligibility for a public health insurance program.

We also proposed that an individual who enrolls in a QHP with or without advance payments of the premium tax credit or cost-sharing reductions must report any changes to the Exchange with respect to the eligibility standards specified in § 155.305 within 30 days of such change. Additionally, we proposed that the Exchange use the verification procedures at the point of initial application for any changes reported by an individual prior to using the self-reported data in an eligibility determination. We solicited comments on whether to allow the Exchange to limit those changes on which an individual must report, to changes in income of a certain magnitude. We noted that this provision would have no effect on whether an individual was liable for repayment of excess advance payments of the premium tax credit at reconciliation.

We also proposed that the Exchange periodically examine certain data sources that are used to support the initial eligibility process to identify death and eligibility determinations for Medicare, Medicaid, CHIP, or the BHP, if applicable. We proposed to generally limit proactive examination to these pieces of information because of the reliability of these data sources and because the identified information provides clear-cut indications of ineligibility for enrollment in a QHP and advance payments of the premium tax credit and cost-sharing reductions.

We further proposed to allow the Exchange to make additional efforts to identify and act on changes that may affect an enrollee's eligibility to enroll in a QHP to the extent that HHS approves a plan to modify the process.[8] We indicated that such approval would be granted if HHS finds that a modification would reduce the administrative costs and burdens on individuals while maintaining accuracy and minimizing delay, that such changes would not undermine coordination with Medicaid and CHIP, and that any applicable provisions related to the confidentiality, disclosure, maintenance, or use of information will be met.

We solicited comments regarding whether and how we should approach additional data matching, whether the Exchange should modify an enrollee's eligibility based on electronic data in the event that he or she did not respond to a notice regarding the updated information, and whether there are other procedures that could support the goals of the redetermination process for changes during the benefit year.

To the extent that the Exchange verifies updated information reported by an enrollee or identifies updated information through data matching, we proposed that the Exchange determine the enrollee's eligibility and provide an eligibility notice in accordance with the process described in § 155.305 and § 155.310, respectively. Additionally, we proposed that changes resulting from a redetermination during the benefit year be effective for the first day of the month following the notice of eligibility determination, and proposed to allow for an exception, subject to the authorization of HHS, in which the Exchange could establish a ''cut-off date'' for changes resulting from a redetermination during the coverage year. We solicited comment as to whether this should or should not necessitate an authorization from HHS, and if there should be a uniform timeframe across all Exchanges. In addition, we solicited comment as to whether this is the appropriate policy for the effective date for changes.

Finally, we proposed that if the eligibility determination results in an individual being ineligible to continue his or her enrollment in a QHP through the Exchange, the Exchange maintain his or her eligibility for enrollment in a QHP through the Exchange for a full month after the month in which the determination notice is sent. However, as soon as eligibility for insurance affordability materially changes, we proposed that the Exchange discontinue advance payments of the premium tax credit and cost-sharing reductions in accordance with the effective dates specified in paragraphs (e)(1) and (e)(2). We solicited comment on this topic, as well as on approaches to ensuring that transitions between insurance affordability programs do not create coverage gaps for individuals.

Comment: We received a number of comments regarding redeterminations conducted during the benefit year, as proposed in § 155.330. While several commenters were supportive of the opportunity for an enrollee to have his or her eligibility redetermined prior to the annual redetermination, other commenters suggested that we limit or eliminate eligibility redeterminations during the benefit year in order to limit movement for enrollees between different insurance affordability programs and QHPs.

Response: We feel it is important for the Exchange to accept and identify changes to help ensure that an enrollee's eligibility reflects his or her true circumstances, which will help minimize repayment of excess advance payments at reconciliation when income increases, increase the affordability of coverage when income decreases, and improve program integrity. Therefore, we maintain in the final rule the opportunity for eligibility redeterminations during the benefit year.

Comment: Of those entities that commented on the process for handling

[8] This provision is proposed in the Exchange proposed rule at 76 FR 41866 (July 15, 2011) and is addressed in this final rule at § 155.330(d)(2).

changes during the benefit year described in proposed § 155.330, a number suggested limiting the scope of changes on which enrollees must report; these commenters stated that requiring reporting of any and all changes potentially impacting eligibility would substantially increase the administrative burden on both the Exchange and on enrollees. Many commenters recommended clarifying that an enrollee in a QHP who is not receiving advance payments of the premium tax credit or cost-sharing reductions would not be required to report changes in their household income or access to minimum essential coverage, as these are not considered when financial assistance is not present. Other commenters suggested limiting the reporting of changes in income; some recommended that enrollees be allowed and encouraged, but never required, to report changes in income, while others were in favor of a establishing a threshold for the reporting of income changes. Generally, those commenters who suggested limiting the changes that individuals must report also suggested that enrollees should be encouraged but not required to report all other changes impacting eligibility, such as changes in income and family size.

Response: In response to commenters' suggestions, we have altered § 155.330 in this final rule regarding the policy of reporting of changes during the benefit year. First, we clarify that the Exchange may not require an enrollee who did not request an eligibility determination for insurance affordability programs to report changes related to eligibility for insurance affordability programs, including changes in income or access to minimum essential coverage. We clarify that we mean an enrollee who, as of his or her most recent interaction with the Exchange, has not requested an eligibility determination for insurance affordability programs. In response to comments regarding which changes an enrollee must report, we amended the regulation text in the final rule to reflect different standards for changes related to income. As a result, we maintain that an individual must report a change related to eligibility for enrollment in a QHP through the Exchange (that is a change in residence, incarceration or citizenship and lawful presence) within 30 days of such change; however, we allow the Exchange to establish a reasonable threshold below which an individual is not required to report a change in income. We believe that allowing the Exchange to limit the changes the enrollee must report will reduce confusion for enrollees and administrative burden on the Exchange, while still ensuring that significant changes are captured. With that said, we clarify that this provision does not allow the Exchange to not process changes in income that are reported by enrollees, regardless of whether they meet the threshold.

Comment: In response to our request for comment in this area, we received comments asking that Exchanges periodically remind individuals to report changes impacting their eligibility. We also received comments recommending that the Exchange provide education regarding what changes must be reported and how the reporting of changes may impact reconciliation.

Response: We have added a provision at paragraph § 155.330(c)(2) of this final rule specifying that the Exchange must provide periodic electronic notifications regarding the standards for reporting changes to an enrollee who has elected to receive electronic notifications, unless he or she has declined to receive such periodic electronic notifications. We believe this will complement the provision allowing Exchanges to limit those changes in income an enrollee must report, by helping ensure that consumers are informed of the impact and importance of reporting any change to the Exchange during the benefit year. In addition, we believe that electronic communications will be minimally burdensome for the Exchange and for enrollees. Exchanges can determine the timing and frequency of such notices.

Comment: A large number of commenters supported our policy proposed at § 155.330(c) directing Exchanges to periodically initiate limited data matches to identify changes in enrollees' eligibility. A few commenters asked that we preserve Exchange flexibility to expand the scope of data matches and others asked that we provide that Exchanges must expand data matches to include income and other data; these commenters noted that such an expansion would help decrease the burden on enrollees to report changes and to decrease inaccuracy when enrollees fail to report. However, some commenters were against any Exchange-initiated data matches, including the proposal to allow Exchanges flexibility to expand the scope of data matches with HHS approval. These commenters stated that such data matches would increase movement between programs for enrollees; they also believe that enrollees are in the best position to report changes impacting their eligibility.

Response: While we acknowledge commenters' calls for Exchange flexibility to expand data matching, we believe that allowing for unlimited data matching without the application of specific standards would be undesirable. Therefore, in the final rule, we maintain the flexibility provision we proposed in the paragraph redesignated in this final rule as § 155.330(d)(2), with one change: we do not require HHS approval to expand data matching, but provide that the Exchange must adhere to specific standards. We also adopt new procedures in this final rule around the verification of data obtained through such expanded data matches, which is explained in more detail in comment response below. Together, these changes will reduce burden for the Exchange and allow the Exchange to take steps to increase the accuracy of eligibility determinations as technology and data sources evolve; furthermore, the Exchange must ensure that such data matches would reduce administrative costs and burdens on individuals, maintain accuracy, minimize delay and would not undermine coordination with Medicaid and CHIP.

Comment: We received a number of comments on the provision proposed in § 155.330(d), related to the verification process and enrollee notification following the Exchange identifying a change that affects eligibility. As noted previously, some commenters objected to any Exchange-initiated data matching; these concerns were based in part on discomfort with the Exchange making changes to an enrollee's eligibility in cases in which the enrollee did not respond to a notice regarding the change. Some suggested that the Exchange verify changes reported or identified through data matching in accordance with the standards proposed in § 155.315 and § 155.320. Several commenters suggested that enrollees be given advance notice of changes identified through data matching and that they be able to affirm all changes prior to the Exchange using the new information. A number of commenters recommended that the notice proposed in § 155.330(d) contain a right to appeal.

Response: For changes in eligibility identified by the Exchange through data matching, the procedures for notifying the enrollee should be more clearly outlined in the final rule. Therefore, in § 155.330(e)(2) of this final rule we provide that for changes identified through data-matching that do not impact household income, family size, or family composition, the Exchange must notify the enrollee of the new data and his or her projected eligibility determination, and allow the enrollee

30 days to notify the Exchange if the information is inaccurate. If the enrollee responds that the information is inaccurate, the Exchange must proceed with the inconsistency process described in § 155.315(f); if the enrollee responds that the information is accurate or does not respond, the Exchange must redetermine the enrollee's eligibility based on the verified data obtained through the data matching process.

For changes to household income, family size and family composition identified through data matching, we provide in § 155.330(e)(3) of this final rule that the Exchange must notify the enrollee of the new data and his or her projected eligibility determination (including the amount of advance payments of the premium tax credit and the level of cost-sharing reductions), and allow the enrollee 30 days to respond to the notice. If the enrollee does respond confirming the information obtained by the Exchange or responds by providing more up to date information, the Exchange must redetermine the enrollee's eligibility based on the data obtained through the data matching process or by verifying the updated information provided by the enrollee. However, if the enrollee does not respond, the Exchange must maintain the enrollee's eligibility without considering the new information. Because data related to income, family size and family composition has the potential to impact both the amount of financial assistance received by the enrollee and his or her tax liability at reconciliation, we believe the procedures for acting on such information should be different from the procedures for acting on data that do not have an impact on income and family size, and that enrollees must actively confirm such changes. We also note that the Exchange must notify the enrollee of the determination made as a result of a redetermination conducted during the benefit year, as indicated in (e)(1)(ii), and that such notice will include the right to appeal, in accordance with § 155.355(a).

Comment: Several commenters suggested clarification of our policies related to effective dates, as proposed in § 155.330(d). A number of commenters suggested that we align effective dates across part 155; among those suggestions was one to align the effective dates for redeterminations with effective dates for coverage under special enrollment periods, as described in § 155.420. Further, we received comments which suggested that we establish a uniform cut-off date.

Response: We recognize the need for greater alignment between the effective dates for redeterminations of eligibility with effective dates for coverage, as described in § 155.420 of this final rule. As such, in the final rule, we provide in § 155.330(f) of this final rule that changes resulting from redeterminations during the benefit year must be implemented for the first day of the month following the date of the redetermination notice; however, we allow the Exchange to establish a cut-off date after which redeterminations would be implemented in the following month, as long as the cut-off date is no earlier than the date established under § 155.420(b)(1), (which is the 15th of the month) in order to effectuate coverage on the first of the following month. We believe that allowing the Exchange to establish such a cut-off date aligning with the cut-off date for coverage effective dates will facilitate administrative efficiency for the Exchange, if it chooses to align. Regarding comments requesting a uniform cut-off date, we wish to maintain Exchange flexibility to establish such a cut-off date, which is the same approach taken in subpart E, and so do not change the policy reflected in § 155.330(f)(2) in this final rule. In the paragraph newly designated as § 155.310(f) in this final rule, we also include the effective dates of eligibility for redeterminations, since these were inadvertently not included in the proposed rule. We also clarify that when we state that the effective date is the date on which the Exchange must implement an eligibility determination, we mean the date on which the applicant's eligibility, for example his or her advance payments of the premium tax credit or cost-sharing reduction, is or can be applied to the cost of his or her coverage.

Comment: We received a number of comments regarding the policy proposed in § 155.330(e)(3), which provides that the Exchange must extend an enrollee's eligibility for enrollment in a QHP for a full month, without advance payments of the premium tax credit or cost-sharing reductions, following a notice of redetermination terminating his or her eligibility for enrollment. Several commenters expressed concern regarding this provision citing a potential for liability to issuers when enrollees neglected to or were unable to pay premiums without financial assistance. Some commenters suggested that individuals must pay premiums in order to receive such coverage, or that the redetermination notice clearly indicate when coverage will be terminated and that the enrollee will be liable for premiums not paid. Others asked that we make clear that an enrollee may always choose to terminate his or her enrollment in a QHP sooner than the termination date included in paragraph (e)(3).

Response: We acknowledge commenters concerns regarding the potential for QHP liability during the available extension of coverage described in proposed § 155.330(e)(3), redesignated as § 155.330(f)(3). We will take into consideration such comments when developing the notice of eligibility determination sent to an enrollee when he or she loses advance payments of the premium tax credit after redetermination and ensure that an enrollee is aware of their responsibility to pay for his or her premium. Furthermore, the provision § 155.430(d)(3) of this final rule, which allows the enrollee to maintain eligibility for enrollment in a QHP without advance payments or cost-sharing reductions until the last day of the month following the notice of termination of coverage is sent, also makes clear that an enrollee may terminate his or her enrollment sooner than such date. We also clarify that the final rule does not provide that an enrollee must pay a premium if he or she does terminate coverage sooner than the date described in § 155.430(d)(3), but we acknowledge that this provision would not prevent an issuer from seeking out premiums owed.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.330 of the proposed rule, with several modifications: we specified in paragraph (b)(1), that an enrollee must report any change with respect to the eligibility standard specified in § 155.305 within 30 days of such change; however, we added in paragraph (b)(1) exceptions to this standard as described in new paragraphs (b)(2) and (b)(3). In new paragraph (b)(2), we provide that individuals who did request an eligibility determination for all insurance affordability programs must not be required to report changes related to eligibility for insurance affordability programs. In new paragraph (b)(3), we specified that for changes in income, the Exchange may establish a reasonable threshold for such changes below which enrollees are not required to report. Also, in new paragraph (b)(4), we added that the Exchange must allow an enrollee, or an application filer on behalf of the enrollee, to report a change via all channels available for the

submission of an application, which are described in § 155.405(c).

We also created new paragraph (c), which describes the standards for the Exchange to verify changes reported by enrollees. We moved proposed paragraph (b)(2) and redesignated it as paragraph (c)(1) and added paragraph (c)(2), which describes that the Exchange must provide enrollees with periodic notifications regarding standards for reporting changes and the opportunity to report any change, to the extent the enrollee has elected to receive electronic notifications and has not opted out of periodic notifications regarding change reporting.

In new paragraph (d)(2), we added the opportunity for the Exchange to make additional efforts to identify and act on changes related to eligibility for insurance affordability programs, in addition to eligibility for enrollment in a QHP as previously proposed. We also removed the language that provided the Exchange with flexibility to conduct data matching during the benefit year, contingent upon HHS approval of a change to the Exchange Blueprint and instead included that this flexibility is subject to compliance with specific standards, including that such efforts would reduce the administrative costs and burdens on individuals while maintaining accuracy and minimizing delay, that it would not undermine coordination with Medicaid and CHIP, and that applicable standards under § 155.260, § 155.270, § 155.315(i) of this section, and section 6103 of the Code with respect to the confidentiality, disclosure, maintenance, or use of such information will be met. We also add that such efforts must comply with the newly designated paragraphs (e)(2) and (3).

In newly designated paragraph (e), we added paragraphs (e)(2) and (e)(3) to describe the procedures for redeterminations that Exchanges must follow upon identifying new information through data matching. In newly designated paragraph (e)(2), we specified that for all changes identified by the Exchange that are not related to income, family size and family composition, the Exchange must notify the enrollee of his or her projected eligibility determination and allow the enrollee 30 days from the date of the notice to inform the Exchange that such information is inaccurate. If the information is inaccurate, the Exchange must follow procedures related to resolving inconsistencies described in § 155.315(f). If the enrollee does not respond within the 30 day period, the Exchange must redetermine his or her eligibility using the new information. In newly designated paragraph (e)(3), we specify that for changes identified by the Exchange that are related to income, family size and family composition, the Exchange must notify the enrollee of his or her projected eligibility determination and allow the enrollee 30 days from the date of the notice to respond to the notice. If the enrollee responds within the 30 day period, the Exchange must redetermine his or her eligibility in accordance with the procedures for redetermining enrollee-reported data. If the enrollee does not respond within the 30 day period, we specified that the Exchange must maintain the enrollee's eligibility determination without the updated information.

In newly designated paragraph (f), we amended the provisions related to effective dates for redeterminations made in accordance with this section. In newly designated paragraph (f)(1), we clarified the exceptions to the provision regarding effective dates for implementing changes resulting from a redetermination. In newly designated paragraph (f)(2), we added that while an Exchange may determine a reasonable point in a month after which a change captured through a redetermination will not be effective until the first day of the month after the month specified in newly designated paragraph (f)(1). We clarify that such reasonable point must be no earlier than the cut-off date described in § 155.420(b)(1) of this part. In newly designated paragraph (f)(3), we also added a new reference to the effective dates described in subpart E to accommodate for renumbering.

We renumbered several paragraphs in this section to accommodate changes to the final rule. Also, in paragraph (d), which was previously designated as paragraph (c), we changed the title to ''periodic examination of data sources.''

h. Annual Eligibility Redetermination (§ 155.335)

In § 155.330, we proposed that the Exchange redetermine the eligibility of an enrollee in a QHP during a benefit year if it receives and verifies new information reported by an enrollee or identifies updated information through data matching. We solicited comments on whether the redetermination based on changes reported or identified during the year should satisfy the annual redetermination as well, and if so, whether this should be a Federal standard or an Exchange option. We also solicited comment on how the interaction between Exchange eligibility and updated tax data can be streamlined, and at what point annual redeterminations should occur. Finally, we solicited comment regarding whether and how we should approach data matching related to redeterminations, and whether there were alternatives that could support the goals of this process.

We also proposed that the Exchange provide an enrollee with an annual redetermination notice and identified specific data elements that should be contained in the notice and solicited comment regarding the contents of the notice. In addition, we proposed that the Exchange direct an individual to report any changes relative to the information listed on the redetermination notice within 30 days of the date of the notice, and specified that the Exchange must verify any changes reported by the individual in response to the notice using the same verification procedures used at the point of initial application, including the provisions regarding inconsistencies.

We also proposed that an enrollee must sign and return the redetermination notice. We solicited comment on policy and operational strategies to improve the accuracy of redeterminations. We also solicited comment as to what steps the Exchange could take to ensure that redetermination minimizes burden on individuals, QHPs, and the Exchange without increasing inaccuracies.

After the conclusion of the 30 day notice period, we proposed that the Exchange determine an enrollee's eligibility based on the information provided to the enrollee in the redetermination notice, along with any information that an enrollee has provided in response to such notice that the Exchange has verified; notify the enrollee; and, if applicable, notify the enrollee's employer. If an enrollee does not sign and return the notice, we proposed that the Exchange redetermine an enrollee's eligibility based on the information provided in the notice. In addition, we proposed that to the extent that the Exchange is unable to verify a change reported by an enrollee as of the close of the 30 day period, the Exchange redetermine the enrollee's eligibility as soon as possible after completing verification.

We solicited comment as to whether the effective dates for changes made as a result of an annual redetermination should be different from the effective dates for changes made as a result of a redetermination that occurs during the coverage year.

Finally, we proposed that if an enrollee remains eligible for coverage in a QHP upon annual redetermination, the enrollee will remain in the QHP selected the previous year unless the

enrollee takes action to select a new QHP or terminate coverage.

Comment: A number of commenters supported the provision in proposed § 155.335(a) to conduct eligibility redeterminations on an annual basis. Many commenters highlighted that this would avoid administrative burden, costs, and loss of eligibility. Several commenters suggested that HHS not provide for more frequent redeterminations.

Response: In the final rule, we maintain the standard in § 155.335(a) to redetermine eligibility on an annual basis. We address redeterminations during the coverage year in our responses to § 155.330.

Comment: The majority of commenters recommended that the timing of annual redetermination as described in proposed § 155.335 align with the annual open enrollment period as specified in § 155.410. Some commenters suggested combining the annual open enrollment notice with the annual redetermination notice. Many commenters recommended that the annual redetermination notice be distributed prior to the start of the annual open enrollment period. One commenter suggested sending the annual redetermination notice no later than 45 days prior to annual open enrollment. Another commenter recommended that HHS provide that Exchanges must send annual redetermination notices to enrollees no later than June 15th of each year. Commenters also suggested giving Exchanges flexibility to determine the best way to conduct redeterminations.

Response: In response to the large number of comments we received on this topic, we have set a timing standard in § 155.335(d) of this final rule for annual redetermination to align with annual open enrollment. In § 155.335(d)(1), we provide that the Exchange must provide the annual redetermination notice and the notice of annual open enrollment in a single, coordinated notice for the 2015 and 2016 benefit year. We believe this will reduce confusion among consumers and reduce administrative burden. In § 155.410(d), we specify that the notice of annual open enrollment will be provided no earlier than September 1 and no later than September 30. We expect that as the program matures, States may have a better understanding of the best time to release the annual redetermination notice, and therefore in § 155.335(d)(2) of this final rule, starting with annual redeterminations for coverage effective on January 1, 2017, we provide flexibility for Exchanges to adjust the timing and coordination of the redetermination notice in future years. The Exchange may exercise this flexibility to provide separate notices, provided that the timing of the redetermination notice is no earlier than the date of the notice of annual open enrollment specified in 155.410(d) and allows a reasonable amount of time for the enrollee to review the notice, provide a timely response, and for the Exchange to implement any changes in coverage elected during the annual open enrollment period; this is to ensure that the enrollee has adequate time to review available plans and change plans, if applicable.

Comment: We solicited comment regarding whether a redetermination during the benefit year should satisfy the annual redetermination standard. Several commenters opposed this concept. One commenter recommended that allowing a redetermination of eligibility during the coverage year to serve as a household's annual redetermination should be a State option. Several commenters recommended that HHS should not give Exchanges the flexibility to conduct redeterminations on a rolling basis. Commenters suggested that annual redetermination should occur at a consistent point in the year for all individuals when new tax data becomes available, regardless if eligibility was redetermined during the coverage year.

Response: We decided not to allow redeterminations during the benefit year to satisfy the annual redetermination for an enrollee. Due to the fixed coverage period and a set annual open enrollment period, we believe allowing for a rolling annual redetermination would create a situation where the Exchange may redetermine an enrollee's eligibility but the enrollee would not be able to switch plans because they would not qualify for an enrollment period. Additionally, we believe that because the annual redetermination relies on tax data which is updated at a specific time each year, rolling annual redetermination would add unnecessary complexity to the streamlined redetermination process. Finally, we also believe that this approach will increase the predictability of Exchange staffing and other resource needs.

Comment: Some commenters suggested HHS clarify that enrollees do not have to submit a new application to complete the annual redetermination process. Several commenters recommended that an individual's information from initial enrollment should be retained and used during the redetermination process. Accordingly, commenters suggested that an enrollee should never have to re-enter any information during the annual redetermination process that has not changed. A few commenters specified that States should use an ''ex parte'' redetermination process, in which the Exchange attempts to redetermine the enrollee's eligibility using information from external data sources; under such a process, the Exchange only contacts the enrollee if additional information is needed. Commenters also suggested that Exchanges and States should use a ''passive'' redetermination process, through which an enrollee notifies the Exchange that he or she agrees with the information included in a redetermination notice by not responding. Several commenters suggested that pre-populated forms or applications be used for annual redeterminations. Many commenters expressed support for the proactive role of the Exchange in obtaining data from external data sources to assist in annual redetermination.

Response: We have maintained the provisions in § 155.335(c) of this final rule that outline information to be presented on the annual redetermination notice. We believe this will increase retention rates by helping to minimize the risk of individuals losing coverage when they remain eligible. We also believe this process will reduce administrative burden on the Exchange by reducing the steps necessary to redetermine eligibility. Furthermore, we add language to paragraph (c)(3) providing that the notice of annual redetermination must include eligibility for Medicaid, CHIP or BHP, if applicable, since the updated tax return information and data regarding MAGI-based income may indicate eligibility for Medicaid, CHIP or BHP, in addition to eligibility for advance payments of the premium tax credit and cost-sharing reductions.

Comment: Several commenters recommended specific information for the content of the annual redetermination notice as specified in proposed § 155.335(c). Items suggested include the date the redetermination will become effective, procedures to correct errors in data obtained or used in the enrollee's most recent eligibility determination, including the 30 day requirement to report changes specified in § 155.335(e), or where individuals may obtain additional information or assistance, including the Exchange Web site, call center, Navigators and other consumer assistance tools. One commenter felt that notices regarding annual redeterminations may be confusing to many consumers. Some commenters recommended that notices comply with standards in § 155.230 to

ensure meaningful access for limited English proficient enrollees. Others recommended that annual redetermination notices include information about rights to appeal.

Response: We provide general standards for all notices from the Exchange in § 155.230, which include accessibility and readability standards outlined in § 155.205(b)(2) and (b)(3). We intend to provide further interpretation regarding issuance of the annual redetermination notice in future guidance which may include a model of the annual redetermination notice and detail on content.

In response to comments, we would also like to clarify the differences between the notices outlined in § 155.335(c) and § 155.310(g) of this final rule. The redetermination notice in § 155.335(c) is the pre-populated form which includes the enrollee's updated information, including—in the case of an enrollee who allowed the Exchange to determine his or her eligibility for insurance affordability programs—updated tax return information and updated current income information. In accordance with § 155.335(e), this notice will be signed and returned by each enrollee to confirm information is up-to-date. After information on this notice has been verified and a final eligibility determination has been made, the Exchange will send a second notice described in § 155.310(g), as finalized in this rule, to notify the enrollee of the final eligibility determination for the upcoming benefit year.

Comment: Many commenters recommended that the final rule should specify that enrollees can report changes through the same channels available for the submission of an application (online, by phone, by mail, in person), as specified in proposed § 155.405.

Response: In 155.335(e)(2) of this final rule, we clarify that an enrollee or an application filer, on behalf of the enrollee, may report a change online, by phone, by mail, or in person. We identify these channels for an enrollee to provide additional information based on section 1413(b) of the Affordable Care Act and § 155.405, which identify how an applicant may submit an application. As the annual redetermination will be functionally the same as a new application for the next benefit year, the use of the same procedures is appropriate. We have also added this provision to § 155.330(b)(4), to allow an enrollee, or application filer on the enrollee's behalf, to report changes via the channels described in § 155.405.

Comment: Some commenters supported the standard set forth in the proposed rule that the verification processes related to changes reported as a part of the annual redetermination process specified in proposed § 155.335(e) be consistent with the processes specified in proposed § 155.315 and § 155.320. Many commenters suggested HHS specify timeframes by which the Exchange must verify changes reported by the enrollee in response to the annual redetermination notice. One commenter suggested a time period of 10 days by which to conduct the verification. Another commenter believed States should have the flexibility to be able to determine any time constraints or verification processes related to changes reported in response to the annual redeterminations.

Response: We support the standard to use the same verification processes for initial applications and for annual redeterminations. We believe that the timeliness standards for verification should be consistent with the standards § 155.310(e); we intend to provide more guidance on the interpretation of the timeliness standard.

Additionally, we would like to clarify that in order to conduct a redetermination as outlined in § 155.335, the Exchange must obtain an authorization from an enrollee to request his or her tax data. We anticipate that this authorization will be obtained during the initial application process, and that such authorization could be accomplished, for example, by allowing enrollees a chance to opt out of authorizing the use of tax data. An enrollee must provide an authorization for the Exchange to obtain tax data for annual redeterminations only if he or she chooses to allow the Exchange to determine his or her eligibility for insurance affordability programs. We also clarify that without such authorization, the Exchange will be unable to access tax return information and, subsequently, conduct an eligibility redetermination for insurance affordability programs.

The Secretary of Treasury will allow an individual to authorize the release of his or her tax data for use by the Exchange in verification of household income for a period of up to five years. In 155.335(k), we specify that the Exchange must have authorization from an enrollee in order to obtain his or her updated tax return information for purposes of conducting an annual redetermination. We specify that the Exchange may obtain this tax return information for a period of no more than five years, based on a single authorization. The Exchange must allow the individual to decline a five-year authorization or to authorize the Exchange to obtain tax return data for annual redetermination for a period of less than five years. We also specify that the Exchange must allow an individual to discontinue, change, or renew the authorization at any time. We expect that an enrollee will have an opportunity to reauthorize the Exchange to obtain tax return data whenever he or she reports changes, at annual redetermination, and in the course of other interactions with the Exchange. We believe this process will be minimally burdensome on the individual and on the Exchange.

In 155.335(l), we clarify that to the extent that an enrollee has requested an eligibility determination for all insurance affordability programs and has not authorized the request of tax data, the Exchange will redetermine the enrollee's eligibility for enrollment in a QHP, but must notify the enrollee that the Exchange will not proceed with the redetermination process until such authorization has been obtained or the enrollee discontinues his or her request for an eligibility determination for insurance affordability programs.

We also clarify that for purposes of providing updated data described in § 155.335(b), we expect that the Exchange will obtain the updated information for enrollees who, as of their most recent interaction with the Exchange, has requested an eligibility determination for all insurance affordability programs; as such, for an enrollee who requested an eligibility determination for insurance affordability programs but who was determined ineligible for advance payments of the premium tax credits or cost-sharing reductions, the Exchange would obtain updated information at annual redetermination, to the extent that the applicable authorization was in place.

Comment: We received a large number of comments expressing concern over the requirement for enrollees to sign and return the annual redetermination notice when no changes have occurred, as specified in proposed § 155.335(f)(1). Commenters suggested the sign and return requirement was an unnecessary burden on consumers and Exchanges, since the Exchange is instructed to redetermine eligibility using the information on the notice even if the notice is not returned. A few commenters highlighted the current practice in Medicaid where annual redeterminations are completed without a signature required from the enrollee.

Response: While signing and returning the redetermination notice

will add an additional step in the redetermination process, due to the financial responsibility imposed on an individual accepting an advance payment of the premium tax credit as part of the reconciliation process, we believe it is important to collect a signature from an enrollee as a means of ensuring that he or she accepts this responsibility.

Comment: Several commenters supported proposed § 155.335(e), which provided that an enrollee correct any erroneous information on the redetermination notice and report changes to the information on the annual redetermination notice within 30 days. A few commenters urged HHS to consider extending the period enrollees are given to return the notice with reported changes consistent with the language in the Medicaid proposed rule, which provides States with the authority to increase this time period to more than 30 days.

Response: In the final rule, we maintain the standard of 30 days for an individual to report changes and believe this standard provides a reasonable amount of time for individuals to review the annual redetermination notice and submit changes as appropriate.

Comment: Commenters recommended adopting the effective dates outlined for the annual open enrollment periods in proposed § 155.410(f) as the effective dates for annual redeterminations, except for enrollees who become eligible for Medicaid as a result of an annual redetermination. In those cases, commenter recommended that Medicaid eligibility and coverage be effective on the first day of the month in which the eligibility determination is made.

Response: In § 155.335(i) of the final rule, we have modified the language in the regulation text to clarify that the effective date for the annual redetermination will be the first day of the coverage year following the year in which the Exchange provided the annual redetermination notice in § 155.335(c) or on the first day of the month following the eligibility notice to the enrollee in accordance with § 155.330(f), whichever is later. The latter part of this clarification addresses situations in which the eligibility determination is made by the Exchange in the benefit year for which the applicant is seeking coverage. The effective dates for annual redetermination should not be confused with the dates by which the Exchange must make a QHP selection effective during the annual open enrollment period as specified in § 155.410(f). Regarding commenters suggestions for the effective dates for individual determined eligible for Medicaid at annual redetermination, we clarify that coverage effective dates for Medicaid eligibility are governed by those standards found in Medicaid regulations at 42 CFR 435.915. In accordance with § 155.310(d)(3), the Exchange must transmit enrollee information promptly and without undue delay to the State Medicaid or CHIP agency so that he or she may be enrolled in Medicaid or CHIP. We note that in accordance with section 36B(c)(2) of the Code, eligibility for premium tax credits (including the advance payments) and cost-sharing reductions will terminate when an individual is eligible for minimum essential coverage, including Medicaid and CHIP coverage.

Comment: Several commenters supported the provision specified in proposed § 155.335(i) to allow an enrollee who remains eligible for enrollment in a QHP upon annual redetermination to remain in his or her QHP without the need to re-select it. One commenter suggested the provision aligns with the goal of a simple and consumer-friendly Exchange. Another commenter emphasized that no enrollee should be removed from coverage until the enrollee has been given notice of an eligibility determination and the right to appeal.

Response: We are finalizing without change the provision to allow an enrollee who remains eligible for enrollment in a QHP upon annual redetermination to remain in his or her QHP without the need to re-select it. We believe this provision will minimize disruptions in coverage for eligible enrollees and administrative burden for the Exchange, QHP issuers, and enrollees. We also clarify that references to termination in this provision only relate to termination initiated by the enrollee, which we believe addresses the commenter's concern about notices and appeals.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.335 of the proposed rule, with the following modifications: in paragraph (a), we noted that annual redeterminations are limited based on the new language in paragraph (l) of this section. In paragraph (b), we clarified that in the case of an enrollee who has requested an eligibility determination for all insurance affordability programs in accordance with § 155.310(b) of this subpart, the Exchange must request updated tax return information, if the enrollee has authorized the request of such tax return information. In paragraph (c), we added that the notice must also include an enrollee's projected eligibility determination, including eligibility for insurance affordability programs. In paragraph (d), we clarified the timing of the annual redetermination. For coverage effective January 1, 2015 and January 1, 2016, the Exchange must satisfy the notice provisions of paragraph (c) of this section and § 155.410(d) of this part through a single, coordinated notice. In paragraph (d)(2), we provided that for coverage effective January 1, 2017, the Exchange may send the annual redetermination notice separately from the notice of annual open enrollment, provided that certain restrictions on the timing of such notices are met.

In paragraph (e) of this section we clarified that the Exchange must allow an enrollee or an application filer, on the enrollee's behalf, to report changes via the channels available for the submission of an application, as described in § 155.405(c) of this part. We also added to paragraph (g)(1), that an application filer may sign and return the annual redetermination notice on an enrollee's behalf. In paragraph (i), we modified the standard for effective dates of annual redetermination to clarify that the Exchange must ensure that the annual redetermination is effective on the first day of the coverage year following the year in which the Exchange provided the notice in paragraph (c) of this section or in accordance with the rules specified in § 155.330(f), regarding effective dates, whichever is later. In new paragraph (k), we added language to specify that the Exchange must have authorization from an enrollee in order to obtain updated tax return information for purposes of conducting an annual redetermination. We also describe that any single authorization will extend for a period of no more than five years, and that an individual may authorize the Exchange to obtain tax data for a period of less than five years, or not at all. We also provide that the enrollee must be able to discontinue, change or renew an authorization at any time. In new paragraph (l), we added language to specify that to the extent that an enrollee who has requested an eligibility determination for insurance affordability programs in accordance with § 155.310(b) has not authorized the request of data described in paragraph (b), the Exchange must notify the enrollee in accordance with the timing described in paragraph (d), and not proceed with the redetermination process described in paragraphs (c) and (e) through (j) until such authorization has been obtained or the enrollee discontinues his or her request for an

eligibility determination for insurance affordability programs in accordance with § 155.310(b).

We also made a few technical corrections to this section including renumbering paragraphs (d) through (k) to account for additional regulation text and updated cross-references based on similar renumbering in other parts of this final rule. In paragraph (e)(1) we clarified that the reference to a notice is referring to the notice in paragraph (c) of this section. We also clarified that changes reported at annual redetermination must be verified according to the processes specified in § 155.315 and § 155.320. Finally, we clarified that the verification referred to in paragraph (h)(2) of this section is the same verification specified in paragraph (f) of this section.

i. Administration of Advance Payments of the Premium Tax Credit and Cost-Sharing Reductions (§ 155.340)

In § 155.340, we proposed reporting provisions for the Exchange related to advance payments of the premium tax credit and cost-sharing reductions. We proposed that in the event of a determination of an individual's eligibility or ineligibility for advance payments of the premium tax credit or cost-sharing reductions, including a change in the level of advance payments of the premium tax credit or cost-sharing reductions for which he or she is eligible, the Exchange provide information to the issuer of the QHP selected by the individual or in which the individual is enrolled.

We also proposed that the Exchange provide eligibility and enrollment information to HHS to enable HHS to begin, end, or adjust advance payments of the premium tax credit and cost-sharing reductions. We solicited comment on whether the information could be used by HHS to support any reporting necessary for monitoring, evaluation, and program integrity. We solicited comment as to how this interaction can work as smoothly as possible and the scope of information that should be transmitted among the relevant agencies.

We further proposed that the information transmitted to issuers include the information necessary to enable the issuer of the QHP to implement or discontinue the implementation, or modify the level of an individual's advance payment of the premium tax credit or cost-sharing reductions.

We proposed to codify the reporting rules in sections 1311(d)(4)(I)(ii) through (iii) and 1311 (d)(4)(J), which support the employer responsibility provisions of the Affordable Care Act. We proposed that when the Exchange determines that an applicant is eligible to receive advance payments of the premium tax credit based in part on a finding that his or her employer does not provide minimum essential coverage, or provides minimum essential coverage that is unaffordable as described in 26 CFR 1.36B–2(c)(3)(v) of the Treasury proposed rule, or does not meet the minimum value standard, as described in 26 CFR 1.36B–2(c)(3)(vi) of the Treasury proposed rule, the Exchange will provide this information to the Secretary of the Treasury. We proposed that the Exchange transmit such applicant's name and SSN to HHS, which will transmit it to the Secretary of the Treasury.

In the event that an enrollee for whom advance payments of the premium tax credit are made or who is receiving cost-sharing reductions notifies the Exchange that he or she has changed employers, we proposed that the Exchange transmit the enrollee's name and SSN to HHS, which will transmit it to the Treasury. We also proposed that in the event an enrollee for whom advance payments of the premium tax credit are made or who is receiving cost-sharing reductions terminates coverage in a QHP through the Exchange during a benefit year, the Exchange transmit his or her name and SSN and the effective date of the termination of coverage to HHS, which will transmit it to the Treasury. We proposed that the Exchange will also transmit his or her name and the effective date of the termination of coverage to his or her employer. Finally, we proposed that the Exchange must comply with the standards related to reconciliation of the advance payments of the premium tax credit specified in section 36B(f)(3) of the Code and 26 CFR 1.36B–5 regarding reporting to the IRS and to taxpayers.

Comment: We received a number of comments asking that we clarify how advance payments of the premium tax credit will be administered. Many comments suggested the use of electronic funds transfers, as well as electronic communications that are compatible with existing issuer infrastructure. Several commenters noted the importance of transparency and flexibility in establishing the standards regarding administration of the advance payment of the premium tax credit and cost-sharing reductions. Commenters suggested the need for further guidance on this topic.

Response: In § 155.340 of this final rule, we provide general standards for the exchange of information necessary for administration of advance payments of the premium tax credit and cost-sharing reductions, as well as to support the employer responsibility and reconciliation provisions of the Affordable Care Act. We anticipate providing more operational and procedural detail about these processes in future guidance.

Comment: Several commenters recommended that the proposed § 155.340(a) include a specific timeliness standard for the Exchange to transmit information to facilitate the administration of advance payments of the premium tax credit and cost-sharing reductions to the applicable QHP and HHS. Commenters recommended that the timeliness standard reflect the ''real-time'' expectation, but to provide for exceptions in instances when systems are not functioning properly. Some commenters suggested that the regulation specify that all transactions be completed within one business day from the initiating event (for example, the completion of an eligibility determination).

Response: In paragraph (d), we adopt, on an interim final basis, a timeliness standard that the Exchange must perform actions outlined in § 155.340(a) to enable advance payment of premium tax credits and cost-sharing reductions ''promptly and without undue delay.'' We also adopt this standard for transmission of information described in § 155.340(b). We intend to interpret this standard in future guidance.

Comment: Several commenters raised various privacy concerns in response to proposed § 155.340(b)(2) and § 155.340(b)(3)(i) prescribing that the Exchange transmit information to HHS when an enrollee changes employers and in the event that an individual for whom advance payments of the premium tax credit are made or who is receiving cost-sharing reductions terminates coverage from a QHP through the Exchange during a benefit year. Some commenters raised concerns over the amount of burden placed on Exchanges to provide this information to HHS and the Secretary of Treasury. A large number of commenters suggested that the information provided be limited to a minimum amount of information, only name and taxpayer ID number. Many commenters recommended striking, ''Social Security number,'' and replacing it with, ''taxpayer identification number.''

Response: We codified the transactions specified in § 155.340(b)(2) and § 155.340(b)(3)(i) from section 1311(d)(4)(I) of the Affordable Care Act, which specifies that they include name and taxpayer identification number. Accordingly, we have replaced, ''Social

Security number,'' with ''taxpayer identification number.'' We note that we have limited the information to be sent to HHS and to the Secretary of Treasury to be the information that is explicitly mentioned in section 1311(d)(4)(I). In addition, like all other activities related to personally identifiable information, the transactions specified in this section are subject to the privacy and security protections specified in § 155.260 of this final rule. Regarding concerns of burden on the Exchange, in addition to this being a statutory standard, we believe that this will largely be an automated process and that the submission of information to HHS and the Secretary of Treasury will not be overly burdensome.

Comment: A number of commenters sought more guidance on how cost-sharing reductions will be implemented and monitored. Commenters suggested HHS provide flexibility and transparency in establishing standards related to cost-sharing reductions.

Response: In § 155.340 of this final rule, we specify that the Exchange will transmit information about an enrollee's eligibility to his or her QHP issuer in order to enable the QHP issuer to provide the correct level of cost-sharing reductions. We intend to provide future guidance on this issue and identify what we interpret to be the minimally necessary information for this purpose.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.340 of the proposed rule, with the following modifications: in § 155.340(a) we replaced the terms applicant and enrollee with tax filer in connection with advance payments of premium tax credits because the tax filer is the eligible person for that benefit; we have retained the use of the terms applicant and enrollee in connection with cost-sharing reductions because that statute does not limit eligibility for that benefit to tax filers or tax payers. In § 155.340(a)(2), we clarified that the Exchange must notify and transmit information necessary to enable the issuer of the QHP to implement, discontinue the implementation, or modify the level of an individual's advance payments of the premium tax credit or cost-sharing reductions, as applicable. In § 155.340(b)(2) and (b)(3)(i) of this section, we removed the standard that the Exchange transmit the enrollee's SSN and replaced it with taxpayer identification number. We also replaced the term ''disenrolls'' with ''terminates coverage'' to align with language used in § 155.430 of this part. We note that coverage terminations by the Exchange are limited to enrollment through the Exchange. For a more detailed discussion, please see the comment and response for § 155.430. We also add in paragraph (d) a timeliness standard for the transmissions of information described in paragraphs (a) and (b).

j. Coordination with Medicaid, CHIP, the Basic Health Program, and the Pre-Existing Condition Insurance Plan (§ 155.345)

Based on comments and feedback to the proposed rule, we are revising the proposed rule to include paragraphs (a) and (g) of this section, and we are seeking comments on these provisions.

In § 155.345, we proposed standards for coordination across insurance affordability programs in order to implement a streamlined, simplified system for eligibility determinations and enrollment as part of the implementation of section 1413 of the Affordable Care Act. In this section, we also proposed standards for coordination between the Exchange and the Pre-Existing Condition Insurance Plan (PCIP), established in accordance with section 1101 of the Affordable Care Act.

Specifically, we proposed that the Exchange enter into agreements with the State Medicaid or CHIP agencies as necessary to fulfill the Exchange responsibilities identified in this subpart. We proposed that as part of the eligibility determination process, the Exchange determine an applicant's eligibility for Medicaid and CHIP, in accordance with standards described in § 155.305 of this subpart, notify the State agency administering Medicaid or CHIP of that determination, and transmit relevant information necessary for the timely enrollment of the eligible individual into coverage. Upon making a determination of eligibility for Medicaid or CHIP, we indicated that the Exchange must also notify the applicant of the determination. We suggested that the Exchange may also facilitate delivery system and health plan selection for Medicaid and CHIP and solicited comments regarding whether and how this integration of delivery system selection could best work for the Exchange, Medicaid, and CHIP.

We also proposed that the Exchange perform a ''screen and refer'' function for those applicants who may be eligible for Medicaid in a MAGI-exempt category or an applicant that is potentially eligible for Medicaid based on factors not otherwise considered in this subpart. We proposed that the Exchange transmit eligibility information related to such application to the applicable State agencies promptly and without undue delay. In addition, we proposed that the Exchange provide advance payments of the premium tax credit and cost-sharing reductions to an individual who is found to be otherwise eligible while the agency administering Medicaid completes a more detailed determination.

We also noted, based on our interpretation of proposed Treasury § 1.36B–2(c)(2) published on the same day in the **Federal Register**, that an applicant who is referred to the Medicaid agency for additional screening and is enrolled in a QHP receiving advance payments of the premium tax credit in the interim would not be liable to repay advance payments if he or she is ultimately determined eligible for Medicaid and for any period of retroactive eligibility.

We proposed that the Exchange provide an opportunity for an applicant who is not automatically referred to the State Medicaid agency for an eligibility determination to request a full screening of eligibility for Medicaid by such agency. We proposed that to the extent that an applicant requests such a determination, the Exchange will transmit the applicant's information to the State Medicaid agency promptly and without undue delay.

We also proposed that the Exchange work with the agencies administering Medicaid and CHIP to establish procedures through which an application that is submitted directly to an agency administering Medicaid or CHIP initiates an eligibility determination for enrollment in a QHP, advance payments of the premium tax credit, and cost-sharing reductions. In addition, we proposed that the Exchange utilize a secure, electronic interface for the exchange of data for the purpose of determining eligibility, including verifying whether an applicant requesting an eligibility determination for advance payments of the premium tax credit and cost-sharing reductions has been determined eligible for Medicaid or CHIP, and other functions specified under this subpart. We also proposed that the Exchange utilize any model agreements established by HHS for the purpose of sharing data as described in this section. We solicited comment as to the content of these model agreements.

Finally, we proposed to develop procedures for the transition of PCIP enrollees to coverage in QHPs offered through the Exchanges to ensure that PCIP enrollees do not experience a lapse in coverage. We solicited comment on additional responsibilities that should be assigned to an Exchange as part of this process, such as providing

dedicated customer service staff for PCIP enrollees or actions that may accelerate or further streamline eligibility determinations for PCIP enrollees.

Comment: A large number of commenters supported a streamlined and coordinated eligibility determination process for all insurance affordability programs. A number of commenters also supported close alignment of policies between the Exchange and other insurance affordability programs to facilitate this streamlining and coordination. Commenters supported the standard specified in proposed § 155.345(a) that the Exchange enter into agreements with Medicaid and CHIP agencies. A few commenters suggested that language be added to regulation text to ensure that the Exchange eligibility determinations for Medicaid and CHIP comply with State plans and interpretive policies and procedures of the State agency or agencies administering the Medicaid or CHIP programs.

Response: We believe that agreements between the Exchange and other insurance affordability programs are important for ensuring such alignment and coordination across programs. We also note that in § 155.300(b) of this final rule, we specify that, in general, references to Medicaid and CHIP regulations in this subpart refer to those regulations as implemented in accordance with policies and procedures as applied by the State Medicaid or State CHIP agency or as approved by the State Medicaid or State CHIP agency. With that said, we have also added new § 155.302 in this final rule that describes in greater detail the options available for configuring responsibilities related to eligibility determinations, which clarifies that there is an option under which the Exchange does not make Medicaid or CHIP eligibility determinations but is considered to be compliant with this final rule; in such situations, the State Medicaid and CHIP agencies exercise final control over eligibility determinations for Medicaid and CHIP for applications submitted to the Exchange.

Additionally, we further clarify standards for coordination in § 155.345(a) of this final rule to align with those outlined in the Medicaid final rule. Such standards are set to provide a clear delineation of responsibilities of each program to minimize burden on individuals, ensure prompt determinations of eligibility, enroll eligible individuals into the program promptly and without undue delay, and ensure compliance with the standards set forth in subpart D. We encourage States to work closely across the Exchange, Medicaid, and CHIP to simplify and streamline eligibility processes to maximize efficiency and minimize administrative costs. In addition, in response to comments regarding coordinating policies across insurance affordability programs to avoid negative outcomes for consumers, we have added new 155.345(f), which provides a special rule for the limited number of situations in which a tax filer's household income, as defined in section 36B(d)(2) of the Code, is less than 100 percent of the FPL for the benefit year for which coverage is requested, the Exchange determines that the tax filer is not eligible for advance payments of the premium tax credit based on § 155.305(f)(2), and one or more applicants in the tax filer's household has been determined ineligible for Medicaid and CHIP based on income. This provision describes that the Exchange must provide information and explanation to the applicant and tax filer in such situations; we clarify that this language is new text, but that it is a means to address gaps in eligibility rules and procedures. This provision will only have an impact after the Medicaid rule in 42 CFR 435.603(i) is applied, which specifies that the Medicaid agency will determine Medicaid eligibility using section 36B rules, which should result in Medicaid eligibility in most cases. As such, we believe that the provision in paragraph (f) will be used in a very limited set of cases, but will ensure individuals are not affected by gaps in eligibility rules.

Comment: Several commenters highlighted the importance of coordinating eligibility and enrollment for individuals who are determined eligible for Medicaid based on factors other than MAGI, for example those qualifying based on disability status. Many commenters to the proposed rule expressed concern that the Exchange standards in proposed § 155.345(b) through (d), which relate to those individuals potentially eligible for Medicaid based on factors not otherwise mentioned in this subpart were overly vague. Commenters requested that HHS provide further details and guidance on the ''basic screening'' standard specified in proposed paragraph § 155.345(b)(1). Several commenters urged HHS to strengthen the standard and others suggested the Exchange should ask a question or a set of questions to assess whether a person is eligible for Medicaid on a non-MAGI basis. Some commenters suggested striking a balance between gathering relevant information and not overburdening applicants with unnecessary questions. A few commenters suggested that States implement oversight mechanisms and protections to ensure that each applicant is directed to the most comprehensive benefits package to which he or she is entitled.

Response: We clarified that the Exchange must assess the information provided by the applicant on his or her application to determine whether he or she is potentially eligible for Medicaid based on factors not otherwise considered in this subpart. We believe the term ''screening'' may have been misleading as the intention of the provision was to simply check the application for an indication that an applicant may be potentially eligible for Medicaid based on factors not otherwise considered, such as disability or age. We appreciate commenters' concerns that the Exchange only gather relevant information and not overburden applicants, and we believe that this approach will meet these standards.

Comment: Many commenters raised concerns that individuals may be unaware of coverage that may be available to them and suggested that HHS clarify how an individual who is not found eligible for Medicaid based on MAGI will be notified of the opportunity to request a full eligibility determination for Medicaid. One commenter suggested that we provide example scenarios in the final rule to show when an applicant may be determined ineligible in a screening but eligible after a full screening. Another commenter suggested the basic screening on factors other than MAGI could be confused as an eligibility determination. Some commenters suggested amending language in proposed § 155.345(c) such that the Exchange must notify applicants of the Medicaid programs that may be available to them so the applicant can request an appropriate determination of Medicaid eligibility from the State agency.

Response: To address this concern, in § 155.345(b) of this final rule, we specify that the Exchange will assess the information provided by the applicant on his or her application to determine whether he or she is potentially eligible for Medicaid based on factors other than MAGI. While not every individual who is potentially eligible for Medicaid based on non-MAGI factors will be identified through the assessment in § 155.345(b), we believe that this provision will help identify a substantial portion of those individuals.

We also clarify in § 155.345(c) of this final rule that the Exchange will notify an applicant of his or her opportunity to request a full determination of eligibility for Medicaid and provide the applicant such opportunity. We anticipate that Exchanges will work with State Medicaid agencies to craft notice text that reflects the options available in specific States for Medicaid eligibility based on factors other than MAGI. We have added to paragraph § 155.345(d) that the Exchange must notify the applicant during the application process that his or her application has been transmitted to the State Medicaid agency. We anticipate that such notices will be the subject of future guidance.

Comment: Many commenters highlighted the importance of seamless transmissions between coverage programs. Some commenters suggested clarifying, ''promptly and without undue delay,'' and adding language providing that the Exchange must transmit the relevant information within 24 hours. A few commenters suggested that HHS establish standards for the State Medicaid agency to follow up on referrals it receives from the Exchange.

Response: We believe it would be more appropriate to interpret such a standard in guidance, which will allow it to evolve with technology and supporting business processes.

Comment: A few commenters also recommended aligning with Medicaid language to clarify that relevant information transmitted to Medicaid or CHIP agencies includes the electronic account containing the finding of Medicaid or CHIP eligibility, all information provided on the application, and any information obtained or verified by the Exchange in making such a finding.

Response: We adopt the following standard to implement such a standard: the Exchange must transmit all information provided on the application and any information obtained or verified by, the Exchange to the State Medicaid agency. As discussed in more detail above, this Exchange final rule does not use the term ''electronic account'' but we believe that the scope of our standard appropriately aligns with the language in the Medicaid final rule on this point.

Comment: The majority of commenters supported the standard to provide advance payments of the premium tax credit to individuals seeking a determination of Medicaid eligibility on a basis other than MAGI until the State Medicaid agency notifies the Exchange that the applicant is eligible for Medicaid. Commenters highlighted that this standard encourages applicants to obtain the most comprehensive coverage for which they are eligible. Commenters also noted this standard is vital to ensuring that consumers have access to continuous health coverage while they navigate the eligibility and enrollment process in their State. One commenter recommended that applicants be able to waive enrollment in a QHP while awaiting a Medicaid/CHIP determination.

Response: We maintain this provision in the final rule. We clarify that this provision applies both when an applicant has not been determined eligible for Medicaid based on MAGI and either is referred by the Exchange to the State Medicaid agency based on screening, or requests a full Medicaid eligibility determination. We also clarify that an applicant is never required to enroll in a QHP while a full Medicaid determination is underway; the Exchange must provide eligibility, but it is the choice of the applicant whether to actually select a QHP. We also clarify that this provision would apply only to the extent that the responsibility to conduct a determination for Medicaid eligibility on bases other than MAGI has not been delegated to the Exchange, through an agreement between the Exchange and the State Medicaid agency.

Comment: A few commenters said that the proposed process in § 155.345(d) for applications submitted directly to Medicaid, CHIP, or BHP was vague and should be clarified to specify that such agencies will screen applicants to determine whether they are eligible for enrollment in a QHP with or without advance payments of the premium tax credit and cost-sharing reductions, and then ''enroll'' eligible applicants. Many commenters supported the provisions in proposed § 155.345(d) that specified that an Exchange may not be required to duplicate any eligibility or verification findings that have already been made by agencies administering Medicaid, CHIP, or the BHP, where applicable. A few commenters suggested that language be added to clarify that Exchanges are not permitted, not simply ''not required,'' to duplicate eligibility and verification findings made by the Medicaid or CHIP agency.

Response: In § 155.345(g) of this final rule, we clarify our intention to maintain a streamlined eligibility determination process for consumers. Consistent with the Medicaid final rule, we add standards for how agencies administering Medicaid, CHIP, and BHP will transmit an application to the Exchange and how the Exchange will take the necessary steps to process such applications. We note that the Medicaid final rule provides additional information regarding the responsibilities of the Medicaid agency with regards to applications submitted directly to Medicaid. In § 155.345(g)(2), we clarify that the Exchange must not duplicate any eligibility and verification findings already made by the transmitting agency, to the extent such findings are made in accordance with this subpart and in § 155.345(g)(3). We also clarify that the Exchange must not request information or documentation from the individual already provided to Medicaid, CHIP, or BHP that was included in the transmission to the Exchange. Additionally, in § 155.345(g)(6) of this final rule, we specify that the Exchange must provide for following a streamlined process for eligibility determinations regardless of the agency that initially received an application. This provision is intended to ensure that an application that is submitted to a State Medicaid or CHIP agency follows the same processes for a complete MAGI-based determination of eligibility to enroll in a QHP, advance payments of the premium tax credit, and cost-sharing reductions.

Comment: Commenters supported the provisions in proposed § 155.345(e) to use of a secure electronic interface to transmit data among the various agencies responsible for determining eligibility for the insurance affordability programs.

Response: We maintain these provisions in the final rule. In addition to these standards, we have also further specified standards for data sharing in § 155.260 in this final rule. More information can be found in the responses to comments found in that section.

Comment: Several commenters requested guidance or standards in proposed § 155.345(i) regarding the transition of Pre-existing Condition Insurance Plan (PCIP) enrollees into the Exchange, and many commenters provided specific suggestions as to what this guidance should consider. Some specific recommendations provided include that the Exchange should develop an agreement with PCIP; the Exchange and PCIP should coordinate to develop a letter informing PCIP enrollees of what they need to do to transition to the Exchange; customer service resources should be dedicated and trained to assist these enrollees to transition smoothly; and others provided recommendations regarding outreach, education, and information that should be provided to PCIP enrollees, frequently citing provider

directories as an example of information that needs to be clearly provided to PCIP enrollees. Some commenters recommended that information be transferred between the PCIP and Exchange programs to reduce the need for the Exchange to request duplicative information from PCIP enrollees and to ease their transition into the Exchange.

Several commenters emphasized that flexibility be given to States to accommodate the transition of PCIP enrollees due to concerns related to the influx of large numbers of high-risk people. Some of these commenters recommended that HHS consider allowing the Exchange to transition PCIP enrollees into 2014 and years beyond. One commenter recommended that the Federal government should not assign specific responsibilities to State-operated Exchanges relating to transitioning PCIP enrollees into Exchanges, while another commenter suggested that HHS evaluate mechanisms to ensure that a distribution of enrollees is balanced among QHPs in the Exchange.

Response: We will consider these comments as we develop future guidance to support a smooth transition of PCIP enrollees into the Exchange that minimizes disruption in the insurance marketplace to the greatest extent possible, while also ensuring that this population has access to affordable, high-quality health insurance.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.345 of the proposed rule, with several modifications: in § 155.345(a), we clarified that the Exchange must provide HHS with copies of any agreements made with other agencies administering insurance affordability programs upon request. We clarified that agreements must include a clear delineation of the responsibilities of each program to minimize burden on individuals, ensure prompt determinations of eligibility and enrollment, including redeterminations, and ensure compliance with paragraphs (c), (d), (e), and (g) of this section. We also modified language in § 155.345(b) to specify that for an applicant who is not eligible for Medicaid based on the standards specified in § 155.305 of this subpart, the Exchange must assess the information provided on the application to determine whether he or she is potentially eligible for Medicaid based on factors included in the streamlined application, but not otherwise considered in this subpart.

In § 155.345(c) of this final rule, we added that the Exchange must provide, and notify an applicant of, the opportunity to request a full determination of eligibility for Medicaid. We also add that the Exchange must provide notification and opportunity for a full determination of eligibility for Medicaid when making a determination in accordance with § 155.330 and § 155. 335. We modified language in § 155.345(d) to specify that if the Exchange identifies an applicant as potentially eligible for Medicaid or an applicant requests a full determination for Medicaid, the Exchange must transmit all information provided on the application and any information obtained or verified by the Exchange to the State Medicaid agency promptly and without undue delay.

In addition, we clarified language in § 155.345(e) to provide that if an applicant potentially eligible for Medicaid is otherwise eligible for advance payments of the premium tax credit and cost-sharing reductions, the Exchange must provide the applicant with such advance payments of the premium tax credit or cost-sharing reductions until Medicaid notifies the Exchange that the applicant is eligible for Medicaid. We amended § 155.345(f) to add a special rule to address situations in which a tax filer's household income is below 100 percent of the FPL for the benefit year for which coverage is requested, the tax filer is not eligible for advance payments of the premium tax credit based on § 155.305(f)(2), and one or more applicants in the tax filer's household is ineligible for Medicaid and CHIP based on income, in which case the Exchange must provide the income information used in the Medicaid and CHIP determination to the applicant, and then repeat the verification process. We modified § 155.345(g)(1) to include the standards set forth in the Medicaid final rule and outline that the Exchange must—(1) Accept, via secure electronic interface, all information provided on the application and any information obtained or verified by, the agency administering Medicaid, CHIP, or the BHP, if a BHP is operating in the service area of the Exchange, for the individual, and not require submission of another application; (2) not duplicate any eligibility and verification findings already made by the transmitting agency, to the extent such findings are made in accordance with this subpart; (3) not request information or documentation from the individual already provided to another insurance affordability program; (4) promptly and without undue delay determine eligibility of the individual for enrollment in a QHP, advance payments of the premium tax credit and cost-sharing reductions, in accordance with this subpart; and (5) provide for following a streamlined process for eligibility determinations regardless of the agency that initially received an application. Additionally, we renumbered paragraphs (c) through (i) to account for the changes described above.

We also made two technical corrections. First, we amended the phrase ''providing advance payments of the premium tax credit'' to ''providing eligibility for advance payments of the premium tax credit''. Second, we changed, ''Pre-Existing Condition Insurance Program'' to ''Pre-Existing Condition Insurance Plan'' to match the actual name of the plan.

k. Special Eligibility Standards and Process for Indians (§ 155.350)

In accordance with section 1402(d)(1) of the Affordable Care Act, in § 155.350(a), we proposed that the Exchange determine eligibility for cost-sharing reductions for an applicant who is an Indian if he or she meets the standards related to eligibility for enrollment in a QHP and has household income that does not exceed 300 percent of the FPL. We also proposed to clarify that the Exchange may only provide cost-sharing reductions to an individual who is an Indian if he or she is enrolled in a QHP. In addition, in § 155.350(b) we provided that the Exchange must determine an applicant eligible for the special Indian cost-sharing rule in accordance with section 1402(d)(2) of the Affordable Care Act if he or she is an Indian, without requiring the applicant to request an eligibility determination that provides for collection or verification of income.

We further proposed a two-phase process by which the Exchange must verify an individual's attestation that he or she is an Indian for purposes of determining whether he or she qualifies for these cost-sharing rules. In paragraph (c)(1), we proposed that the Exchange must verify an applicant's attestation that he or she is an Indian if an applicant submits satisfactory documentation to support their attestation of citizenship or lawful presence in accordance with § 155.315(e). In paragraph (c)(2), we proposed that the Exchange must rely on any available electronic data sources that have been authorized by HHS. Lastly, if the process under (c)(1) does not occur or data sources are unavailable, the individual is not represented in the source, or the source is not reasonably compatible with the applicant's attestation, we proposed that

the Exchange follow the standard inconsistency procedures under § 155.315(e). We solicited comment on the availability and usability of electronic data sources, as well as best practices for accepting and verifying documentation related to Indian status.

Comment: One commenter sought clarification about proposed § 155.350(b), which codifies section 1402(d)(2) of the Affordable Care Act. The commenter noted that this section appears to apply only to those services received at the IHS, and the commenter asked if it also applies to referrals to outside specialists, etc. The commenter further suggested that the proposed regulations appear to go beyond what the statute asks and recommends that the special cost-sharing provisions be limited to those services furnished through Indian Health Providers.

Response: Our intent is to adhere to the statute. In accordance with section 1402(d)(2) of the Affordable Care Act, the cost-sharing rule described in § 155.350(b) of this final rule is limited to only an item or service furnished directly by the Indian Health Service, an Indian Tribe, Tribal Organization, or Urban Indian Organization or through referral under contract health services.

Comment: Several commenters generally requested that all applicants and potential applicants be given notice that there may be benefits and protections that apply if the applicant is an Indian. One commenter recommended that determining Indian status should be a one-time occurrence, and the commenter further requested that any data matching system used to identify eligible American Indians or Alaska Natives should only provide information essential to establish whether an individual is an Indian in order to protect the privacy of the individual from unwarranted intrusions. The commenter acknowledged that there will be cases in which further verification is necessary or where there is a gap in information available through data matching, and that there should be other vehicles by which an individual can establish qualifications for benefits and protections as an American Indian or Alaska Native. Another commenter suggested that any reasonable documentation be accepted, and lists a number of potential documents that would satisfy this policy. One commenter recommended that Indians with tribal enrollment cards should be able to submit their tribal enrollment number on their application.

Response: We anticipate that verification of Indian status for purposes of determining eligibility for Exchange-related benefits will only be a one-time occurrence for applicants. Additionally, the utilization of any electronic data sources for purposes of verification of Indian status will be subject to the privacy and security standards outlined in § 155.260 and § 155.270 of this final rule, as is the case for all data acquired and used by the Exchange in the eligibility determination process. Lastly, under § 155.350(c)(3) of this final rule, we reference section 1903(x)(3)(B)(v) of the Act for standards for acceptable documentation, which includes documents issued by Federally-recognized tribes. These standards for acceptable documentation provide uniformity in process for applicants claiming Indian status.

Comment: A few commenters recommended that the Exchange accept self-attestation for verification of Indian status, stating that self-attestation should be sufficient if the application questions are framed in a way that can be used to determine eligibility. One commenter suggested that verification of Indian status only be conducted when there are inconsistencies that cannot be resolved through simple explanation and attestation by the individual, or if there is some indication of fraud on the part of the individual, and further recommended that if electronic data sources are utilized to verify Indian status, that the only appropriate data source is the registration database used by Indian Tribe, Tribal Organization, or Urban Indian Organization programs.

Response: We are maintaining the verification process described under § 155.350 in this final rule. This verification is tied to a full exemption from cost-sharing, which could involve a substantial expenditure for the Federal government; consequently, we are specifying a more stringent process for verification though we note that § 155.315(h) allows the Exchange flexibility to modify this and other verification processes with HHS approval. In addition, we note that the documentation process described under § 155.350(c)(3) is similar to the documentation process utilized by the IHS when determining eligibility for American Indians/Alaska Natives who seek services at IHS facilities. The standard for Exchanges is slightly different from the standard for such services, however, which means that the registration database for Indian Tribe, Tribal Organization, or Urban Indian Organization programs may not be a one-to-one match. With that in mind, we are working closely with the IHS and intend to work with States and tribes to determine whether and how electronic data can support this process.

Comment: Several commenters recommended that American Indians be determined eligible for advance payments of the premium tax credit and cost-sharing reductions through the Exchange even if they have access to qualifying coverage in an eligible employer-sponsored plan, notably because cost-sharing may be more costly for the employer-sponsored plan in comparison to that for a QHP through the Exchange given the special cost-sharing benefits provided for Indians under section 1402(d) of the Affordable Care Act. Other commenters recommended that American Indians under 300 percent of the FPL should be exempt from both cost-sharing and premiums for QHPs through the Exchange.

Response: The comment regarding eligibility for advance payments of the premium tax credit and cost-sharing reductions based on eligibility for qualifying coverage in an eligible employer-sponsored plan is addressed in responses associated with § 155.320(e). Additionally, in accordance with section 1302(c)(3) of the Affordable Care Act, the definition of ''cost-sharing'' as provided does not include premiums; therefore, HHS does not interpret this statutory provision to say that the special cost-sharing benefits provided to Indians under section 1402 of the Affordable Care Act includes an exemption from premiums for a QHP through the Exchange. Nothing in this final rule impacts an Indian's ability to access IHS facilities at no cost-sharing.

Summary of Regulatory Changes

For the reasons described in the proposed rule and considering the comments received, we are finalizing the provisions proposed in § 155.350 of the proposed rule, with the following modifications: In paragraph (a)(1)(i), we clarify that in accordance with section 1402(f)(2) of the Affordable Care Act, an applicant must be eligible for advance payments of the premium tax credit in order to receive cost-sharing reductions based in part on household income. In paragraph (a)(1)(ii), we add a citation to clarify that for purposes of cost-sharing reductions under paragraph (a)(1), household income is defined in section 36B(d)(2) of the Code and FPL is defined in section 36B(d)(3) of the Code.

l. Right to Appeal (§ 155.355)

In § 155.355, we proposed that an individual may appeal any eligibility determination or redetermination made by the Exchange, including determinations of eligibility for enrollment in a QHP, advance payments of the premium tax credit, and cost-

sharing reductions. We noted that we intend to propose the details of the individual eligibility appeals processes, including standards for the Federal appeals process, in future rulemaking.

Comment: We received a number of comments in support of our proposal that the Exchange must provide a notice of the right to appeal and instructions on how to file an appeal of any aspect of an eligibility determination in accordance with proposed § 155.310(g), § 155.330(d), or § 155.335(g). However, several commenters recommended that we provide greater detail around the appeals process in the final rule, including specific standards for the notice, coordination or integration with the Medicaid and CHIP appeals processes, and alignment of standards with Medicaid.

Response: We acknowledge the importance of providing greater detail regarding the appeals process, and will do so in future rulemaking.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.355 of the proposed rule, with the following technical modifications: In paragraph (a), we added ''eligibility'' to describe the determination notice. We also edited the references to other sections of subpart D to account for renumbering.

5. Subpart E—Exchange Functions in the Individual Market: Enrollment in Qualified Health Plans

In subpart E, we outline the initial, annual, and special enrollment periods as well as the enrollment process and the termination of coverage process.

a. Enrollment of Qualified Individuals into QHPs (§ 155.400)

In § 155.400, we proposed that the Exchange must: (1) Accept a QHP selection from an applicant who is determined eligible for enrollment in a QHP; (2) notify the issuer of the applicant's selected QHP; and (3) transmit information necessary to enable the QHP issuer to enroll the applicant. We also proposed that the Exchange send QHP issuers enrollment information on a timely basis, and sought comment as to whether we should establish a specific frequency for enrollment transactions, such as in real time or daily, in our final rule. Finally, to ensure that the Exchange and QHP issuers have identical plan enrollment records, we proposed that the Exchange maintain records of enrollment, submit enrollment information to HHS, and reconcile the enrollment files with the QHP issuers no less than monthly.

Comment: With respect to proposed § 155.400(a), several commenters recommended adding the limitation that the Exchange transmit ''only'' information necessary to effectuate enrollment. Commenters further recommended HHS identify the information that Exchanges should transmit to QHP issuers.

Response: We outline the limitations for information the Exchange may collect, use or receive in § 155.260 of this final rule, which addresses privacy and security of information. Across all functions, the Exchange will only acquire, maintain, and disclose information that is necessary for Exchange operations. Specific data elements for transmission to QHP issuers will be identified at a later date.

Comment: One commenter recommended allowing Exchanges to contract with safety net providers to conduct enrollment activities, similar to the activities they perform for Medicaid.

Response: In general, the Exchange has discretion to contract with an eligible contracting entity to perform Exchange functions on its behalf, as outlined in § 155.110 of this final rule. Furthermore, § 155.210(c)(2)(viii) of this final rule allows for ''other public or private entities that meet the standards of this section,'' to serve as Navigators, including ''State or local human service agencies.''

Comment: One commenter encouraged the Exchanges to initiate what it referred to as a preliminary ''pipeline'' reporting under proposed § 155.400(a), so that QHP issuers would have a sense of the enrollment volume they might expect over the next month, particularly during, and leading up to open enrollment periods.

Response: Exchanges have the flexibility to notify QHP issuers of the number of individuals who have received eligibility determinations for coverage through the Exchange, as well as to work with QHP issuers to define other operational communications that would streamline administration. We do not believe it is necessary or within statutory authority for Exchanges to share any personally identifiable information with QHPs about individuals who have not selected the QHP issuer's offering.

Comment: Several commenters noted that the success of health reform hinges on individuals' ability to easily enroll in, and retain coverage. They generally recommended instituting enrollment processes that do not overburden individuals with paperwork and documentation.

Response: We believe the streamlined application discussed in § 155.405 and the Internet Web site discussed in § 155.205 of this final rule will help to achieve a streamlined process for all applicants. In addition, in § 155.315(g) of this final rule, we codify a provision of the Affordable Care Act that specifies that an applicant does not have to provide information beyond the minimum necessary to support the eligibility and enrollment process.

Comment: One commenter recommended that QHP issuers be responsible for the enrollment of participants in the Exchange in accordance with proposed § 155.400(a), since they currently facilitate the enrollment process, and will continue to do so for products outside of the Exchange.

Response: Prior to enrollment by the QHP issuer, the Exchange will need to transmit enrollment information to the QHP issuer because the individual must have an eligibility determination for coverage, and, if interested, for advance payments of the premium tax credit and cost-sharing reductions. Furthermore, the Exchange must report enrollment information to HHS in order to initiate advance payments of the premium tax credit and cost-sharing reductions. Once enrollment information has been provided by the Exchange, the QHP issuer is ultimately responsible for effectuating enrollment.

Comment: One commenter noted that the proposed provision in § 155.400(a)(2) for the Exchange to transmit information necessary to enable the QHP issuer to enroll the applicant, appears to be inconsistent with the proposed § 155.205(b)(6), now redesignated in this final rule as § 155.205(b)(5), which established that the Exchange Web site must have the capacity to allow enrollment. The commenter asked HHS to clarify whether these are intended as alternatives.

Response: We have clarified language in this final rule at § 155.205(b)(5) to ensure that the Exchange Web site allows consumers to make a QHP selection, thereby initiating the enrollment process. Section 155.400(a)(2) of this final rule describes the subsequent step in the enrollment process, and establishes that Exchanges must transmit the QHP selection to the appropriate QHP issuer.

Comments: Many commenters requested clarification on the definition of a ''timely'' transmittal of enrollment information from the Exchange to QHP issuers, as discussed in proposed § 155.400(b)(1). Some suggested specifying ''daily,'' ''real-time,'' or leaving the definition to State flexibility.

Response: In this final rule, we have modified the regulatory text in § 155.400(b)(1) to be consistent with § 155.340(d), which states that Exchanges must send eligibility information to both QHP issuers and to HHS promptly and without undue delay. We expect Exchanges will send each QHP issuer an automated file of applicable eligibility and enrollment transactions, and simply include HHS on the transmission. HHS will issue future guidance outlining standards and timing for these transmissions. We further expect Exchanges to use the monthly reconciliation standards outlined in § 155.400(c) and § 155.400(d) to ensure consistency in enrollment records.

Comment: A few health insurance issuers cautioned that the QHP issuer's acknowledgement of the receipt of an enrollment transaction under proposed § 155.400(b)(2) is not a confirmation that the information is complete. The commenters stated that it should be the responsibility of the Exchange to ensure that the eligibility and enrollment information being sent to the QHP issuer is complete and accurate. One commenter recommended a strong file validation protocol, so that any incomplete or conflicting records were identified prior to submission.

Response: The intent of the acknowledgement standard in § 155.400(b)(2) is to ensure that QHP issuers accept responsibility for completing an individual's enrollment. We expect Exchanges will establish a process by which the QHP issuer signifies that it has received complete and accurate enrollment information, and if it does not, promptly notifies the Exchange that the information is insufficient to complete enrollment.

Comment: One commenter recommended that QHP issuers acknowledge the receipt of eligibility and enrollment information, as described in proposed § 155.400(b)(2), to both the Exchange and the applicant, while one health insurance issuer recommended that State laws govern communication between QHP issuers and enrollees.

Response: We clarify in part 156 the information that QHP issuers must provide to enrollees. As finalized in § 156.260(b), the QHP issuer must provide notice of the effective date of coverage and must provide new enrollees an enrollment information package as an acknowledgement of enrollment as described in § 156.265(e). However, we note that Exchanges may apply additional rules to ensure an optimal consumer experience, such as notifying the applicant that the Exchange has transmitted enrollment information to the QHP issuer.

Comments: Several commenters requested clarification on reporting standards under proposed § 155.400(c), including timing, format, and content. Some commenters requested that the HHS reporting standard be omitted. One State agency recommended that State regulators have unfettered access to all data sets used for and by Exchanges.

Response: As noted above, HHS plans to provide guidance on timing, format, and content of the enrollment information transmissions required under § 155.400 of this final rule. We have removed the standard in proposed § 155.400(c) for Exchanges to submit enrollment information to HHS on a monthly basis, because § 155.400(b)(2) of this final rule directs Exchanges to send eligibility and enrollment information to HHS ''promptly and without undue delay.'' With respect to the comment on the ability of State regulators to have access to all data collected and used by Exchanges, we note that data sets that contain personally identifiable information, and that are used by an Exchange while the Exchange is fulfilling its responsibilities in accordance with § 155.200(c), may only be disclosed if such disclosure is consistent with § 155.260. Disclosures for other purposes must be consistent with applicable Federal and State laws.

Comment: For the reporting and reconciliation standards outlined in proposed § 155.400(c) and § 155.400(d), one commenter requested clarification to ensure that Exchanges may collect monthly enrollment and termination data directly from insurers. The commenter sought to eliminate the need for the Exchange to collect this information on a case by case basis, compile it, and then reconcile it with issuers; all activities that the commenter stated are not feasible under a free market model where the Exchange Web site may not be tracking an individual's coverage choices.

Response: Per subpart D of both the proposed and final rules, the Exchange must make a determination of an individual's eligibility in order for a person to enroll in a QHP through the Exchange. In addition, per § 155.340(a), the Exchange must know which QHP a qualified individual has selected in order to make any advance payments of the premium tax credit. We do not believe that collection of enrollment data from issuers on a monthly basis would be sufficient to meet these standards, and therefore maintain the policy in § 155.400 of this final rule.

Comment: Most commenters supported a minimum monthly reconciliation under § 155.400(d), as long as Exchanges retained flexibility to reconcile more frequently. One health insurance issuer recommended reconciling only the cases with changes on a more frequent basis, while reconciling the full case load on a quarterly basis.

Response: In this final rule, we maintain the requirement in § 155.400(d) for monthly reconciliation, and require Exchanges to reconcile enrollment information with HHS in addition to QHP issuers. Exchanges have flexibility to reconcile some or all cases more frequently. We expect that Exchanges will work to minimize enrollment discrepancies, to automate reconciliation where possible, and to streamline any manual reconciliation activities that remain necessary.

Summary of Regulatory Changes

We are finalizing the standards proposed in § 155.400 of the proposed rule with the following modifications: In § 155.400(b) regarding the timing of data exchanges, we specify in the final rule that the Exchange must send enrollment information to both QHP issuers and HHS promptly and without undue delay. In § 155.400(c) we remove the standard that Exchanges submit enrollment information to HHS on a monthly basis. In § 155.400(d), we establish that Exchanges must reconcile enrollment information with both QHP issuers and HHS no less than on a monthly basis. We also made a few non-substantive edits to streamline the regulatory text.

b. Single Streamlined Application (§ 155.405)

In § 155.405, we proposed to codify that a QHP issuer must use the single streamlined application for qualified individuals and employers to enroll in QHPs through the Exchange. We also offered States the option to develop an alternative application, subject to approval by HHS. We sought comment regarding whether we should establish that applicants do not have to answer questions that are not pertinent to the eligibility and enrollment process.

We further proposed that the Exchange must accept applications from multiple sources including the applicant, an authorized representative (as defined by State law), or someone acting responsibly for the applicant; and that an individual must be able to file an application online, by telephone, by mail, or in person. We solicited comment on whether an individual must be able to file an application in person.

Comment: A handful of commenters urged that the application described in proposed § 155.405(a) enable eligibility determinations for other human services programs such as the Supplemental Nutritional Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) in addition to Medicaid, CHIP, and BHP.

Response: In this final rule, we are only establishing that the application support eligibility for Exchange coverage and insurance affordability programs. With that said, States can decide to use HHS-approved alternative applications that include human services programs.

Comment: Some commenters suggested that all States should use the HHS-created application and requested that we strike proposed § 155.405(b) from this section, which pertains to alternative applications. Issuers were concerned that they could be subjected to too much variation in Exchange applications. Other commenters supported our proposal to give States flexibility to create an alternative application should they desire.

Response: Section 1413(b)(1)(B) of the Affordable Care Act directs HHS to allow a State to develop and use its application, subject to compliance with standards. We do not believe that variations in applications will place a burden on QHP issuers since the necessary enrollment information will be consistent across Exchanges. In addition, we reiterate our position in the proposed rule that the single streamlined application has been developed to meet the requirement for a uniform enrollment form, as set forth in section 1311(c)(1)(F) of the Affordable Care Act. We further clarify that the single streamlined application, or an HHS-approved Exchange alternative application, must be used for enrollment in a QHP through the Exchange only. Per § 156.265 of the final rule, a QHP can satisfy the standard regarding use of the single streamlined application by directing the individual to file the single streamlined application with the Exchange, or ensuring the applicant received an eligibility determination for coverage through the Exchange through the Exchange Internet Web site.

Comment: Numerous commenters urged HHS to add language to proposed § 155.405 stating that the standard single streamlined application should not include questions that are not pertinent to the eligibility and enrollment process. Other commenters wanted to ensure that the application will collect demographic information beyond what is established in the statute.

Response: The Exchange eligibility proposed rule and this final rule at § 155.315(g) prohibit Exchanges from requiring information beyond the minimum necessary to support eligibility determinations for the Exchange and insurance affordability programs. This provision limits the application to information that is pertinent to the eligibility and enrollment process.

Comment: Numerous commenters expressed support for allowing an applicant to file an application in person, as described in the preamble to § 155.405 in the proposed rule. A handful of commenters also urged HHS to go further and establish that Exchanges must allow individuals to submit, change, or renew coverage at numerous locations, including social service offices, welfare offices, community-based organizations, and any other pathway that accepts applications for government health benefit programs. Some commenters expressed concern that the proposed regulation did not ensure effective communication for individuals with disabilities because it did not provide for assistance when filing an application in person. Other commenters suggested that HHS establish that Exchanges must provide in-person assistance in a number of different locations throughout States.

Response: We are maintaining the standard that applicants should be able to file an application for an eligibility determination through the Exchange and other insurance affordability programs in person. We have added to regulation text in § 155.405(c)(2)(iv) to establish that the facilities where someone files an application in person comply with the Americans with Disabilities Act. However, Exchanges have the flexibility to determine the venues at which applicants may file in person, which will allow Exchanges to configure staffing to meet the specific characteristics of each State. We encourage Exchanges to consider allowing enrollees to submit changes or complete the annual redetermination process at an in-person location. We are not, however, amending this in the final rule.

Comment: A handful of commenters suggested that an Exchange could fulfill the standard to accept applications in person in accordance with proposed § 155.405(c)(2) through its Navigator program. These commenters stated that in-person assistance may be burdensome for the States, but Navigators are a natural venue for such assistance.

Response: An Exchange has flexibility in how it structures it Navigator program and may use such a program to meet the standard for in-person application filing and to provide assistance to individuals applying for coverage through the Exchange.

Comment: Some commenters requested that the application provide meaningful access for individuals who are LEP, provide effective communication for individuals with disabilities, and also that the application be translated into a number of different languages. Some commenters recommended the application be translated into no fewer than 15 languages.

Response: We address meaningful access issues and concerns in § 155.205(c) as well as in § 155.230(b) of this final rule. Additional guidance issued at a later date will coordinate our accessibility standards with insurance affordability programs, and across HHS programs, as appropriate, providing more detail regarding literacy levels, language services, and access standards.

Comment: A significant number of commenters asked for clarification on who can qualify as an authorized representative to file an application on behalf of an applicant under proposed § 155.405(c)(1) and, in particular, on what HHS meant by ''someone acting responsibly for the applicant'' and how this role is different from an authorized representative. Other commenters asked for more details on the privacy standards that will be applied to authorized representatives and others assisting with the application process. Additionally, commenters thought that the final rule should specify that a Navigator cannot apply on behalf of the individual without the signed consent of an individual or an individual's parent, guardian, court-designated representative, or legally-approved family member.

Response: We expect to provide future guidance regarding who may serve as an authorized representative; we intend for this to track against who can serve as an authorized representative under Medicaid. We also note that a single application may have both an application filer and an authorized representative. In paragraph § 155.405(c) of this final rule, we state that an ''application filer'' may file the application, and we have added a corresponding definition in § 155.20 in this final rule that notes that an application filer includes authorized representatives as well as someone acting responsibly for the applicant, if

the applicant is a minor or incapacitated. This change clarifies situations when someone acting responsibly for the applicant might file an application. In addition, the privacy and security standards addressed in § 155.260 apply to any person or entity that views or receives personally identifiable information from or on behalf of an applicant through the Exchange. Therefore, we believe that these standards will ensure appropriate privacy standards for authorized representatives and others assisting applicants. Further, the application process will include an authentication process. HHS expects to issue future guidance on the authentication process to verify an individual's identity. In addition, we expect that application assisters who are not Navigators, agents, or brokers will provide support for consumers during the application process, and we anticipate providing additional guidance regarding this role, including on appropriate privacy and security protections.

Comment: Several commenters asked for clarification regarding whether mobile devices could be used to apply for coverage under proposed § 155.405(c)(2). Many of these commenters recommended that the final rule establish that the single streamlined application must be available through mobile devices or mobile applications.

Response: In this final rule, Exchanges must only provide an online application at this time (see § 155.405(c)(2)(i)). Although it may be beneficial for applicants to be able to complete the application and the plan selection process using a mobile device, Exchanges do not have to provide this functionality given the short implementation timeframe.

Summary of Regulatory Changes

We are finalizing the definitions proposed in § 155.405 of the proposed rule, with a few small modifications: We changed the final rule in § 155.405(b) from ''request'' to ''collect'' for consistency with other parts of the final rule. We replaced (c)(1)(i) through (c)(1)(iii) of the proposed rule with (c)(1) ''application filer,'' which incorporates the previous categories included in the proposed rule. In paragraph (c)(2), we have made minor clarifying edits. We codified the standard that an individual may file an application for coverage in person and clarified that reasonable accommodations must be made for individuals with disabilities.

c. Initial and Annual Open Enrollment Periods (§ 155.410)

In § 155.410, we proposed that the Exchange adhere to specified initial and annual open enrollment periods and indicated that qualified individuals and enrollees may begin or change coverage in a QHP at such times. We sought comment on the duration of the initial open enrollment period, which we proposed to be from October 1, 2013 to February 28, 2014. We also requested comment on the proposed annual open enrollment period (October 15 to December 7 of each year) and whether we should consider an alternative annual enrollment period from November 1 through December 15 of each year.

We also proposed standards for effective dates based on the date when an individual's QHP selection is received. To coordinate coverage in a QHP with the advance payments of the premium tax credit, we proposed that coverage in a QHP may only begin on the first of the month. We sought comment as to whether we should consider twice monthly or flexible effective dates of coverage for individuals who forgo advance payment of the premium tax credit for the first partial month or who are not eligible for advance payments of the premium tax credit.

We also proposed that the Exchange must send written notification to enrollees about the annual open enrollment period and sought comment on whether we should codify specific elements that must be included in the notification and timing of the notification. We further proposed that the Exchange must ensure coverage is effective as of the first day of the following benefit year for a qualified individual who has made a QHP selection during the annual open enrollment period.

Finally, we sought comment on whether Exchanges should automatically enroll individuals who received advance payments of the premium tax credit and then have coverage terminated from a QHP because the QHP is no longer offered, if such individual does not make a new QHP selection. We also sought comment on whether we should allow for automatic enrollment of individuals in specific circumstances, such as mergers between issuers or when one QHP offered through a specific issuer is no longer offered, but there are other options available to the individual through the same issuer. Lastly, we sought comment as to how far such automatic enrollment should extend if we were to allow it.

Comment: Several commenters expressed concern about adverse selection with respect to the enrollment periods in proposed § 155.410 and § 155.420. The commenters supported limited enrollment periods and opposed any flexibility for States to implement longer or more frequent enrollment periods.

Response: In both the proposed and final rules, we have attempted to balance the risk of adverse selection with the need to ensure that consumers have adequate opportunity to enroll in QHPs through an Exchange. We believe that the enrollment periods described in § 155.410 and § 155.420 of this final rule achieve that balance. As we describe later in this section, we believe that additional time is needed for the initial enrollment period, given that Exchanges are a new coverage option under the Affordable Care Act, and significant education and outreach will be needed to make individuals aware of this coverage opportunity.

Comment: Several commenters requested more State flexibility with respect to the enrollment periods identified under proposed § 155.410 and § 155.420. The commenters recommended States have flexibility to set their own enrollment periods and effective dates, especially those States already operating Exchanges. A few commenters requested State flexibility to extend enrollment periods, particularly for vulnerable populations.

Response: Section 1311(c)(6) of the Affordable Care Act specifically directs the Secretary to provide for initial, annual and special enrollment periods. In both the proposed and final rule, we have tried to provide State flexibility while adhering to our responsibility under the statute to establish the enrollment periods identified under section 1311(c). Therefore, we have proposed and finalized in this rule the minimum uniform enrollment periods across all Exchanges, including a special enrollment period for individuals experiencing an exceptional circumstance.

Comment: Almost all commenters supported the proposed start date of October 1, 2013 under proposed § 155.410(b) for the initial open enrollment period. One State agency believed it was unrealistic to expect Exchanges to be operational prior to January 1, 2014, given the systems development challenges ahead. A few commenters requested flexibility to begin enrollment, or a ''pre-qualification'' period before October 1, 2013. Commenters recommended an

initial open enrollment period lasting as few as two months and as long as three years. The majority of commenters recommended a six-month initial open enrollment period, ending on March 31, 2014, one month later than in the proposed rule. Most commenters suggested that the longer initial open enrollment period would allow more time for individuals and families to learn about their coverage options, and more time for them to select a QHP. Finally, commenters recommended that individuals who enroll during the initial open enrollment period be permitted to change plans at least once without penalty during the Exchanges' first year of operation.

Response: In this final rule, we maintain the start date of October 1, 2013 for the start of the initial open enrollment period. Although coverage will not be effective until January 1, 2014, we believe that individuals and families need time to explore their coverage options and QHPs need time to process plan selections. We have extended the initial open enrollment period by one month—from February 28, 2014 to March 31, 2014. HHS's experience with the initial open enrollment period for Medicare's Prescription Drug Benefit Program supports an extended period. We have not extended the initial open enrollment period past March 31 in order to limit the risk of adverse selection, as expressed by commenters.

Comment: Several commenters recommended a robust outreach campaign prior to the initial open enrollment period. One group recommended that health insurance issuers notify all individual market subscribers about their potential eligibility for financial assistance through an Exchange under this section.

Response: We encourage Exchanges to leverage existing resources in their marketing efforts, including working with issuers to determine how they can participate most effectively. Section 155.205(e) of this final rule directs Exchanges to conduct outreach and education activities to educate consumers about the Exchange and to encourage participation.

Comments: Several commenters representing State agencies and health insurance issuers expressed concern about effective dates proposed in § 155.410(c). The commenters asserted that the specified minimum of eight days between plan selection and coverage effective date was too short, and that they needed as many as 30 days to make coverage effective. Commenters recommended that we ensure there is sufficient lag time between QHP selection and effective dates.

Response: Based on the commenters' recommendation to allow more time between QHP selection and effective dates, we have modified the proposed QHP selection cutoff date in this final rule from the 22nd to the 15th of the month. As described in more detail below, we have also provided flexibility for Exchanges to work with QHP issuers to make coverage effective more quickly.

Comment: Many commenters, namely consumer and patient advocates, were concerned that the proposed effective dates under § 155.410(c) and § 155.410(f) would lead to coverage gaps for individuals losing coverage mid-month. The commenters offered alternative effective dates, including twice monthly, continuous, and retroactive. Many commenters responded positively to our solicitation for comments on whether to allow mid-month or flexible effective dates for qualified individuals willing to forgo advance payments of the premium tax credit until the 1st of the following month, or who are ineligible for such payments. Others requested that coverage be guaranteed for the 1st of the month for all qualified individuals, even when they select a QHP on the last day of the previous month. Finally, a few commenters recommended printable, temporary insurance cards that individuals could use until the enrollment process was completed.

Response: We recognize the need to minimize coverage gaps, especially for vulnerable populations. However, the suggested alternatives could have negative consequences for Exchanges and QHP issuers, by increasing costs and administrative burden. Because the initial open enrollment period will be the Exchanges' first experience with enrollment, and many newly-eligible individuals will be seeking to enroll at the same time, we believe it is important to maintain administrative processes consistent with health insurance issuers' experience, while at the same time including flexibility for improvement as Exchanges and QHP issuers enhance their capabilities.

In response to commenters' concerns, we have added two new options for earlier initial open enrollment period effective dates in § 155.410(c)(2) of this final rule. We have also added the same options for special enrollment period effective dates in § 155.420(b)(3) of this final rule. An Exchange may adopt one or both options, provided that it demonstrate to HHS that all of the participating QHP issuers agree to effectuate coverage in a timeframe shorter than discussed in § 155.410(c)(1)(ii) through § 155.410(c)(1)(iii). We include this qualification because QHP issuers may need to implement administrative changes to accommodate the modified effective dates. We note that individuals seeking the earlier effective date described in § 155.410(c)(2)(i)(B) must waive the benefit of advance payments of the premium tax credit and cost-sharing reductions if coverage is effectuated mid-month. However, individuals do not have to accept this earlier effective date. As an example, if all QHP issuers in State X agree that they can effectuate coverage eight days after QHP selection, and individual A makes a QHP selection on January 17th, 2014, the issuer may effectuate the coverage on January 25th, provided that the individual is willing to forgo advance payment of the premium tax credit for the seven days of coverage in January.

Comment: In response to our request for comment in the preamble of proposed § 155.410(d) on whether we should set a standard for the timing of the annual open enrollment notice, most commenters supported a standard for the Exchange to send a notice of annual open enrollment 30 days prior to the start of enrollment, though one patient advocacy organization recommended 60 days' notice.

Response: We have added a standard in this final rule in § 155.410(d) that the Exchange send the notice no earlier than September 1st, and no later than September 30th of each year, in preparation for an October 15th annual open enrollment. Because subpart D of this final rule directs the annual redetermination notice to be combined with the annual open enrollment notice, we have allowed a 30 day window for States to produce and mail the combined notice. We believe that 60 days is too far in advance of annual open enrollment for enrollees to remember to take action.

Comment: Many commenters representing patient and consumer advocacy groups recommended that proposed § 155.410(d) establish an additional notice to be sent 30 days before the end of the annual open enrollment period to enrollees who had not yet selected a QHP. Some commenters recommended the use of social media and mass media to increase awareness of annual open enrollment.

Response: We note that Exchanges may send additional notices and conduct outreach to assist consumers with enrollment, but we do not establish such notices as a minimum standard.

Comment: A few commenters recommended that HHS provide a

model annual open enrollment notice and a process for deviating from that notice. Suggestions for the notice's content included: meaningful access standards, information about how to access brokers and application assisters, an explanation of the once-a-year nature of an annual enrollment period, the implications of going uninsured, and the criteria for qualifying for a special enrollment period. Several commenters recommended that the notice of annual eligibility redetermination described in proposed § 155.335(c) be combined with the notice of annual open enrollment described in § 155.410(d), into a single, streamlined notice.

Response: HHS intends to provide Exchanges with a model notice in future guidance. The model will consider the content recommended above. In response to commenters' recommendation to combine and streamline notices, we have added timing standards to the notice of annual redetermination notice in § 155.335(d) of this final rule.

Comment: One commenter noted that health insurance issuers already send a notice of annual open enrollment. The commenter stated that if Exchanges did the same, as described in proposed § 155.410(d), it would be duplicative and unnecessarily burdensome for Exchanges.

Response: While it is possible that an Exchange or a State insurance regulator might direct health insurance issuers to send a notice of annual open enrollment, HHS is not imposing such a standard. We therefore do not believe § 155.410(d) is duplicative, and we maintain it in the final rule. Issuers may continue to send such notices at their discretion.

Comment: Several commenters, namely health insurance issuers, recommended a shorter annual open enrollment period under proposed § 155.410(e), lasting between 30 and 45 days, to discourage adverse selection. Conversely, several other commenters recommend extending the annual open enrollment period until at least December 15th (for a total of at least 60 days), to give individuals and families more time to explore their coverage options. One commenter recommended quarterly instead of annual open enrollment periods, to increase opportunities for consumers to enroll. Commenters recommended annual open enrollment periods lasting between 30 and 90 days, with several recommending continuous open enrollment.

Response: As noted above, the rule seeks to balance flexibility for consumers with the need to limit adverse selection. The 53-day length of the annual open enrollment period balances these competing interests, and gives individuals and families ample time to explore coverage options. Therefore we maintain the annual open enrollment start and end dates in § 155.410(e) of this final rule.

Comment: One health insurance issuer suggested limiting an enrollee's QHP selection during annual open enrollment in proposed § 155.410(e) to only one metal level higher. For example, the commenter believed that enrollees should not be permitted to move from a bronze level QHP to a gold or platinum level QHP. In response to a similar proposal in § 155.420(f) of the proposed rule to limit movement between QHPs during special enrollment periods, most commenters, with the exception of a few health insurance issuers, either objected to the provision outright, or recommended additional exceptions to allow movement between QHPs. One commenter noted that because the special enrollment periods were generally not tied to changes in an individual's health status, they did not pose a risk of adverse selection.

Response: We have removed § 155.420(f) from the final rule. We do not believe it is appropriate to limit enrollee movement between QHPs during the annual open enrollment period in § 155.410(e), and we have not added the restriction requested by the commenter.

Comment: With respect to the proposed annual open enrollment period under § 155.410(e), many commenters were concerned that its overlap with the open enrollment periods for SHOP, Medicare and other Federal programs would create an unmanageable administrative workload at the end of each year. Some commenters suggested moving the Exchange's open enrollment until after the first of the year to better align it with tax filing season and with many employers' annual open enrollment periods. Others recommended staggered, individual-specific open enrollment periods. For example, periods could be linked to birthdays, to spread out enrollment over the course of the year. Others recommended that the annual open enrollment period reflect the current enrollment practices in the individual and small-group market, and at the least, align inside and outside the Exchange. Some commenters representing senior citizens supported the alignment with Medicare.

Response: We recognize that the annual open enrollment period overlaps with that of other Federal programs. However, we believe that the alternatives suggested by commenters would lead to undesirable outcomes. For instance, aligning the annual open enrollment period with the tax season would mean that the coverage year and the tax year no longer align, and in the first year consumers could have more than 12 months of coverage before receiving an opportunity to change QHPs. Further, the updated tax return information may not yet be available via the data services hub. We believe that a rolling open enrollment period, with individual-specific dates would add complexity for families and increase risk selection. It would also eliminate the ability to conduct a single enrollment campaign when consumers could take action. We therefore maintain the proposed open enrollment period in § 155.410(e) of this final rule. With respect to the comment on aligning the enrollment period inside and outside the Exchange, we clarify that this rule only sets standards for Exchanges.

Comment: In response to our request for comment on the issue of auto-enrollment, several State agencies supported the rule's lack of auto-enrollment standards, because they perceived it as permitting flexibility. A few commenters explicitly opposed auto-enrollment. The remainder of the commenters supported the option for Exchanges to auto-enroll individuals who become unintentionally uninsured, but they expressed concerns over limiting an individual's right to choose his or her own QHP. Most commenters recommended that an Exchange send multiple notices to individuals facing potential auto-enrollment, and provide a 30- to 90-day period for individuals to change QHPs after being auto-enrolled.

Response: We have established flexibility for the Exchange to auto-enroll qualified individuals when the Exchange demonstrates to HHS that it has good cause to do so under § 155.410(g) of this final rule. We expect to issue guidance outlining generally the circumstances under which HHS will approve Exchange auto-enrollment. HHS will also monitor auto-enrollment practices across Exchanges for appropriateness and effectiveness.

Comment: A few commenters stressed that any QHP into which qualified individuals are auto-enrolled must meet women's reproductive needs, as well as the need for local providers. The commenters recommended that the QHP in which an individual is auto-enrolled resemble any previous QHP coverage the qualified individual had.

Response: All QHPs must offer the essential health benefits established

under section 1302(b) of the Affordable Care Act, which includes coverage of maternity and newborn care. Also, all QHPs must comply with Exchange network adequacy standards that ensure a sufficient number and type of providers to assure that all services will be accessible without unreasonable delay, per § 156.230. HHS will consider other commenter suggestions in developing guidance for § 155.410(g) of this final rule.

Summary of Regulatory Changes

We are finalizing the definitions proposed in § 155.410 of the proposed rule, with the following modifications: in § 155.410(b), we extended the end date of the initial enrollment period from February 28, 2014 to March 31, 2014. In § 155.410(c)(2), we modified the initial enrollment period effective date such that a QHP selection must be received by the Exchange by the 15th of the month to secure an effective date of the first day of the following month. We also provided Exchanges flexibility to effectuate coverage more quickly if all QHP issuers offering coverage through the Exchange agree with the earlier dates, but noted that advance payments of the premium tax credit and cost-sharing reductions cannot begin until the first of the month. We further specified in § 155.410(d) that the Exchange must send the notice of annual open enrollment no earlier than September 1st, and no later than September 30th of each year. Finally, in § 155.410(g) we added an option for Exchanges to automatically enroll qualified individuals at such time and in such manner as HHS may specify, and subject to the Exchange demonstrating to HHS that it has good cause to perform such automatic enrollments.

d. Special Enrollment Periods (§ 155.420)

In § 155.420, we proposed that the Exchange must allow a qualified individual or enrollee to enroll in a QHP or change from one QHP to another outside of the annual open enrollment period if such individual qualifies for a special enrollment period. We proposed special enrollment period effective dates that generally followed the proposed initial enrollment period effective dates in § 155.410.

For each special enrollment period we proposed a standard length of 60 days from the date of the triggering event, unless the regulation specified otherwise. We requested comment on whether special enrollment periods, particularly those described in paragraphs § 155.420(d)(4), § 155.420(d)(6), and § 155.420(d)(7), should have an alternate trigger or start date. The special enrollment periods we proposed were triggered by the following events:

- A qualified individual and any dependents losing other minimum essential coverage. We provided several examples of loss of coverage, and we sought comment on our proposal to limit this special enrollment period to the loss of minimum essential coverage, rather than loss of any coverage.
- A qualified individual gaining or becoming a dependent through marriage, birth, adoption, or placement for adoption. We solicited comment on whether States might consider expanding the special enrollment period to include gaining dependents through other life events.
- An individual, not previously lawfully present, gaining status as a citizen, national, or lawfully present individual in the U.S.
- Consistent with the Medicare Prescription Drug Program, a qualified individual experiencing an error in enrollment.
- An individual enrolled in a QHP adequately demonstrating to the Exchange that the QHP in which he or she is enrolled substantially violated a material provision of its contract.
- An individual becoming newly eligible or newly ineligible for advance payments of the premium tax credit or experiencing a change in eligibility for cost-sharing reductions.
- New QHPs offered through the Exchange becoming available to a qualified individual or enrollee as a result of a permanent move.
- The individual is an Indian, as defined by the Indian Health Care Improvement Act. We solicited comment on the potential implications on the process for verifying Indian status for purposes of this special enrollment period.
- A qualified individual or enrollee meeting other exceptional circumstances, as determined by the Exchange or HHS. Similar to section 9801 of the Code, we proposed that loss of coverage does not include failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage. We also proposed that loss of coverage not include situations allowing for a rescission as specified in 45 CFR 147.128.

We proposed that the Exchange allow an existing enrollee who qualifies for a special enrollment period to only change plans within the same metal level of coverage, as defined by section 1302(d) of the Affordable Care Act. We proposed a single exception for new eligibility for advance payments of the premium tax credit or change in eligibility for cost-sharing reductions. We requested comment as to whether we should provide an exception for catastrophic plan enrollees who become pregnant.

Comment: Several commenters sought clarification on the types of documents needed to qualify for a special enrollment period, as described in proposed § 155.420(a). Some requested that the same verifications used for determining eligibility for coverage also be used to verify eligibility for a special enrollment period. Others, namely State agencies, requested State flexibility for determining special enrollment period eligibility.

Response: Exchanges must verify information outlined in § 155.315 of the rule in order to make an eligibility determination, which includes a determination of eligibility for enrollment periods, per § 155.305(b). Exchanges will be able to determine eligibility for most special enrollment periods using the information available through verifications outlined in § 155.315. However, given that the eligibility criteria for some of the special enrollment periods in § 155.420 do not directly align with the criteria to establish eligibility for coverage through the Exchange or insurance affordability programs in § 155.315, we expect Exchanges will use other verification standards and processes to determine eligibility for those particular special enrollment periods.

Comment: Several commenters recommended adding standards for Exchanges, QHP issuers and employers to notify an individual about his or her potential eligibility for a special enrollment period under proposed § 155.420(a). For example, commenters recommended that employers include a notice about employees' potential eligibility for a special enrollment period with any health benefit change materials, or that QHP issuers notify enrollees who report a change in address.

Response: HHS will issue guidance pertaining to notices that may include information on special enrollment periods. We expect that Exchanges will include information about all enrollment periods both on their Web site and other informational resources.

Comment: Many commenters expressed general concerns about adverse selection. The commenters requested that individuals be limited to only one special enrollment period per month, and recommended limiting individuals' movement between QHPs

during some or all special enrollment periods.

Response: While we recognize the need to limit the risk of adverse selection, we do not believe it is necessary to limit special enrollment periods, given the nature of the types of special enrollment periods. We received similar comments on the issue of limiting enrollees' movement between QHPs during open and special enrollment periods, and have responded to them in preamble for § 155.410(e) and § 155.420(f), respectively.

Comment: A few commenters suggested that the special enrollment periods described in this section be aligned more closely with HIPAA rules for consistency inside and outside the Exchange. A few other commenters instead recommended aligning the special enrollment periods more closely with Medicare's special enrollment periods.

Response: Section 1311(c)(6) of the Affordable Care Act establishes that Exchange special enrollment periods follow those specified in section 9801 of the Code (the HIPAA special enrollment periods) and reflect those available under part D of title XVIII of the Act. The final rule balances these two parameters by adopting relevant provisions from each. In response to comments requesting closer alignment with HIPAA rules, we have added regulatory text to § 155.420(b)(2) to ensure first-of-the-month effective dates for qualified individuals who gain or become dependents through marriage, and for qualified individuals who lose minimum essential coverage. We have also aligned more closely with HIPAA rules by clarifying what is included under loss of minimum essential coverage in § 155.420(e).

Comment: Many commenters made suggestions for effective dates under § 155.420(b) similar to those made for the proposed § 155.410(c) and § 155.410(f) on effective dates during the initial and annual open enrollment periods.

Response: With the exception of the cases noted above in § 155.420(b)(2), we have modified the special enrollment period effective dates in proposed § 155.420(b) to align with initial enrollment period effective dates in § 155.410(c) of this final rule. Our reasoning follows the same logic for both sections of the rule.

Comment: Several commenters recommended 30-day special enrollment periods, under proposed § 155.420(c), consistent with the HIPAA standard, while several others supported the proposed 60-day periods, consistent with several special enrollment periods under the Medicare Prescription Drug Benefit Program. Several commenters recommended extending the periods for as long as 120 days, particularly for vulnerable populations.

Response: Regarding the length of Exchange special enrollment periods outlined in § 155.420(c) of the final rule, our experience with the Medicare Prescription Drug Benefit Program informs our decision to adopt the 60-day window, which generally conforms with several special enrollment periods in the Medicare Prescription Drug Benefit Manual that extend for two months beyond the month of a triggering event. We believe that this approach will give consumers the time they need to explore their coverage options through the Exchange, following a change in life circumstances. We have not extended the length of the enrollment period due to concerns about adverse selection. Exchanges may grant special enrollment periods in advance of a triggering event, so long as the effective date of coverage does not occur before the triggering event, and so long as there is no overlap in coverage for which the individual receives advance payments of the premium tax credit or cost-sharing reductions while enrolled in other minimum essential coverage.

Comment: Several commenters, namely health insurance issuers, asked HHS not to add any additional special enrollment periods to those listed in proposed § 155.420(d). Several other commenters recommended additions to the rule, including special enrollment periods for certain changes in plan provider networks, exhaustion of the COBRA disability extension, denial of services due to a provider's moral or religious opposition, and pregnancy.

Response: The Affordable Care Act establishes that Exchange special enrollment periods follow those specified in section 9801 of the Code and part D of title XVIII of the Act. The additional special enrollment periods suggested by commenters are not specified in the Code, nor are they similar enough to those available under the Act for HHS to include them in the final rule. Therefore the final rule implements the statute without additions. We note, however, that the special enrollment period for exceptional circumstances in § 155.420(d)(9) of this final rule provides an additional opportunity for enrollment when unforeseen circumstances arise.

Comment: Regarding proposed § 155.420(d)(1), for individuals losing minimum essential coverage, many commenters sought clarification about what coverage it included. Several commenters questioned whether an individual would be eligible for this special enrollment period if offered COBRA, and how the policy related to proposed § 155.420(e) and the Treasury proposed rule. Many commenters also sought assurance that loss of coverage included loss of coverage through Medicaid, CHIP and the BHP. One health insurance issuer recommended that loss of Medicaid or CHIP only be included if it is the result of a reported change in household income to an Exchange that disqualifies the individual or family from Medicaid or CHIP. A few health insurance issuers supported the language in proposed § 155.420(d)(1) specifying loss of ''minimum essential coverage,'' as opposed to any coverage, because it limits adverse selection by prohibiting individuals from dropping their substandard coverage when they became sick or injured. A few other commenters recommended Exchange flexibility to offer special enrollment periods to individuals losing non-minimum essential coverage.

Response: The Exchange establishment proposed rule preamble provides several examples of loss of coverage, including loss of Medicaid and CHIP, in accordance with section 9801(f)(3) of the Code. The examples remain accurate for this final rule. We have further clarified § 155.420(e) in this final rule by specifying that loss of coverage includes those circumstances described in 26 CFR 54.9801–6(a)(3)(i) through (iii). This clarification aligns the special enrollment more closely with section 9801 of the Code. An individual could lose eligibility for Medicaid or CHIP as a result of a reported change in household income, or as a result of other circumstances.

Qualified individuals are eligible for the loss of minimum essential coverage special enrollment period described in § 155.420(d)(1), even if offered COBRA. The Treasury proposed rule defines COBRA coverage as minimum essential coverage only if the individual enrolls in such coverage. Therefore, if an individual elects and enrolls in COBRA, he or she cannot qualify for this special enrollment period until exhausting COBRA, as described in § 155.420(e), but if the individual does not elect COBRA, he or she may take advantage of the Exchange special enrollment period. Regarding the recommendation to allow Exchanges to offer this special enrollment period to individuals losing non-minimum essential coverage, we have not adopted this policy in

deference to the status the statute gives to minimum essential coverage.

Comment: Regarding the special enrollment period for individuals gaining or becoming a dependent as described in proposed § 155.420(d)(2), many commenters made arguments for either limiting or for expanding the list of life events through which an individual becomes or gains a dependent. Several commenters recommended adding domestic partners, partners joined in civil unions, or dependents gained through guardianship. Several other commenters recommended that State law determine the types of dependents allowed.

Response: For the same reasons as described above, we do not find legal grounds for expanding the definition of dependents for the purpose of the special enrollment period described in § 155.420(d)(2). Therefore, we retain this provision in this final rule without modification.

Comment: Regarding the special enrollment period for individuals becoming lawfully present, outlined in proposed § 155.420(d)(3), several commenters questioned whether an individual moving from one lawfully present category to another would be granted this special enrollment period if it affected his or her eligibility for certain types of coverage.

Response: To qualify for coverage without advance payments of the premium tax credit or cost-sharing reductions through an Exchange under the special enrollment period described in both the proposed and final rule at § 155.420(d)(3), the individual cannot have been previously lawfully present.

Comment: Regarding the special enrollment periods for errors in enrollment, and for contract violations, outlined in proposed § 155.420(d)(4) and § 155.420(d)(5) respectively, several commenters sought clarification on the kinds of events that would trigger them, and how individuals would demonstrate such events. A few health insurance issuers recommended appeals processes, either in conjunction with, or instead of these special enrollment periods. They recommended various limitations on the special enrollment period for errors in enrollment, and one commenter recommended that it be removed from the rule all together. Several other commenters sought clarification as to which entities are considered ''agents of the Exchange or HHS,'' and recommended that at least QHPs be included as such agents.

Response: The special enrollment periods in § 155.420(d)(4) and § 155.420(d)(5) of this final rule are generally consistent with those offered under the Medicare Prescription Drug Program, as noted above. We expect Exchanges to develop guidance and standard operating procedures for considering requests for this special enrollment period. We encourage Exchanges to do so in consultation with health insurance issuers and other stakeholders. HHS may also provide future guidance to help Exchanges in operationalizing this special enrollment period.

Comment: Regarding the special enrollment period for individuals newly eligible or ineligible for advance payments of the premium tax credit, outlined in proposed § 155.420(d)(6), a couple of commenters sought clarification as to whether an individual newly released from incarceration would qualify for the special enrollment period, even if he or she did not qualify for advance payments of the premium tax credit or did not experience a change in cost-sharing reductions.

Response: Qualified individuals newly released from incarceration are eligible for the special enrollment period afforded to individuals who gain access to a new QHP as a result of a permanent move, as outlined in § 155.420(d)(7) of this final rule and as described further below.

Comment: A couple of commenters recommended that the special enrollment period for individuals newly eligible or ineligible for advance payments of the premium tax credit, outlined in proposed § 155.420(d)(6), clarify that individuals may not qualify for this special enrollment period if they become eligible for an increase or decrease in their existing advance payments of the premium tax credit. Conversely, one commenter responding to HHS' request for comment recommended that this kind of special enrollment period be offered to all individuals who experience a change in income resulting in recalculation of their advance payments of the premium tax credit.

Response: The final rule specifies that individuals may only qualify for this special enrollment period in § 155.420(d)(6) if they are newly eligible or ineligible for advance payments of the premium tax credit, and we do not believe clarification is necessary, as requested by the commenter. That said, if an individual experiences a change in his or her existing payments of the premium tax credit in tandem with a change in level of cost-sharing reductions, the individual could qualify for this special enrollment period.

Comment: One commenter recommended dividing the special enrollment period in proposed § 155.420(d)(6) into two distinct periods—one for individuals gaining eligibility for advance payments of the premium tax credit or experiencing a change in cost-sharing reductions, and a second for individuals whose employer-sponsored coverage ceases to meet affordability or minimum value standards.

Response: While we have not added a special enrollment period specifically for individuals whose employer-sponsored coverage ceases to meet affordability or minimum value standards, as recommended by the commenter, we clarify in § 155.420(e) that loss of minimum essential coverage includes those circumstances described in 26 CFR 54.9801–6(a)(3)(i) through (iii). We believe that between the special enrollment periods offered for loss of minimum essential coverage in § 155.420(d)(1) and for employer-sponsored coverage becoming unaffordable in § 155.420(d)(6), individuals will have ample opportunities to enroll in coverage through the Exchange.

Comment: Regarding the special enrollment period for permanent moves, outlined in proposed § 155.420(d)(7), one health insurance issuer recommended that the provision be revised so that it would only be a triggering event if an enrollee moves permanently outside the service area of his or her existing QHP. Several health insurance issuers also recommended that individuals who move across State lines receive an eligibility determination from the Exchange in their new State.

Response: The special enrollment period in § 155.420(d)(7) is similar to the special enrollment period under part D of title XVIII of the Act, as directed by section 1311(c)(6) of the Affordable Care Act. Both are intended to afford individuals the full range of plan options when they relocate. Individuals moving to a new State should receive an eligibility determination from their new State's Exchange. Qualified individuals are responsible for reporting a permanent move.

Comment: Several commenters recommended that a special enrollment period be triggered by the date of a permanent move described in § 155.420(d)(7), while others recommended it be triggered by the date the individual reports the move to the Exchange, with a time-limited time window in which to report it. In cases where an individual's eligibility for employer-sponsored coverage terminates or changes, in response to proposed § 155.420(d)(1) and (d)(6) respectively, several commenters recommended that the period be

triggered by the date the employee learns of the termination or change. Other commenters recommended that it be triggered by the actual date of the termination of or change in coverage. In cases where an individual becomes newly eligible for advance payments of the premium tax credit or experiences a change in cost-sharing reductions, in response to proposed § 155.420(d)(6), several commenters recommended that the period be triggered by the date the individual experienced a change in circumstances, while others recommended it be triggered by the date of the Exchange's official eligibility determination. Several other commenters recommended less structured approaches, such as leaving the trigger up to the consumer with the change in circumstances, or allowing the particular circumstances to dictate the trigger. Many commenters also recommended that individuals be permitted to seek special enrollment periods in advance of a known triggering event.

Response: We expect to issue guidance to help Exchanges determine how to define the triggering events and consider the recommendations received. We believe it is critical to establish a balance between minimizing gaps in coverage and the need to avoid coverage overlaps when premium tax credits are involved. Exchanges may grant special enrollment periods in advance of a triggering event, so long as the effective date of coverage does not occur before the triggering event, and so long as there is no overlap in coverage for which the individual receives advance payments of the premium tax credit or cost-sharing reductions while enrolled in other minimum essential coverage.

Comment: Regarding the special enrollment period for Indians, outlined in proposed § 155.420(d)(8), some commenters expressed support, while others either opposed it or recommended that States have flexibility to adopt their own special Indian provisions. Many commenters sought further clarification on how the Exchange would verify an individual's status as an Indian. Some disagreed with the definition of Indian outlined by HHS in proposed § 155.420(d)(8), and some provided a detailed legal analysis to support their position. Others recommended allowing special enrollment periods more frequently than once per month in cases where any QHP network excludes Indian Health Service, tribal, or urban Indian providers or when a QHP drops such providers from its network.

Response: Consistent with the proposed rule, HHS is codifying the special monthly enrollment period for Indians in accordance with section 1311(c)(6)(D) of the Affordable Care Act. Sections 155.300 and 155.350(c) of this final rule address comments submitted regarding the definition of Indian and verification of an individual's status as an Indian as it relates to eligibility for cost-sharing reductions. The same verification rules apply to eligibility for this special enrollment period. As stated above, we do not believe that there is legal flexibility to include additional special enrollment periods.

Comment: Regarding the special enrollment period for individuals with exceptional circumstances, outlined in proposed § 155.420(d)(9), many commenters supported the broad language, while several others recommended more specificity. A few commenters recommended that States, not HHS, determine the exceptional circumstances.

Response: We have modified the language in § 155.420(d)(9) to permit individuals to request a special enrollment period by demonstrating to their Exchange that they meet exceptional circumstances. The modified language establishes that individuals must demonstrate such circumstances in accordance with guidelines issued by HHS. Consistent with examples outlined in the proposed rule preamble, HHS's guidance for this special enrollment period will outline circumstances when HHS may grant special enrollment periods directly, such as in cases of natural disasters.

Comment: A few commenters supported the exclusion from special enrollment periods when individuals failed to pay their premiums on a timely basis, outlined in proposed § 155.420(e), while several other commenters explicitly opposed this provision. Several commenters only opposed the exclusion for individuals who failed to pay their COBRA premium on a timely basis, noting that many people are likely to elect COBRA without realizing that there are more affordable coverage options through the Exchange.

Response: The limitation described in § 155.420(e) reflects similar limitations in both section 9801 of the Code, and part D of title XVIII, as directed by section 1311(c)(6) of the Affordable Care Act. As stated in the response to comments on § 155.420(d)(1) (for individuals losing minimum essential coverage) individuals are free to decline COBRA and instead enroll in a QHP through the Exchange. We have also added clarification to § 155.420(e) to indicate which circumstances are included under loss of minimum essential coverage.

Comment: While a few health insurance issuers supported the limits on special enrollment periods outlined in proposed § 155.420(f), most commenters either opposed the provision outright, or recommended additional exceptions, such as exceptions for pregnant women, or for the special enrollment periods described in proposed § 155.420(d)(2), § 155.420(d)(4), § 155.420(d)(5), and § 155.420(d)(8). One commenter noted that because the special enrollment periods were generally not tied to changes in an individual's health status, they did not pose a risk of adverse selection.

Response: We have removed § 155.420(f) from the final rule because special enrollment periods are generally not tied to changes in an individual's health status, and are unlikely to increase the potential for adverse selection. Just as qualified individuals are free to move between metal levels during the initial and annual open enrollment periods, they are also free to do so during special enrollment periods.

Summary of Regulatory Changes

We are finalizing the standards proposed in § 155.420 of the proposed rule, with several modifications: in § 155.420(b) related to effective dates, we modified the special enrollment period effective dates such that a QHP selection must be received by the Exchange by the 15th of the month to secure an effective date of the first day of the following month. We provided Exchanges flexibility to effectuate coverage more quickly by demonstrating to HHS that all QHP issuers offering coverage through the Exchange agree with the earlier dates, but noted that advance payments of the premium tax credit and cost-sharing reductions cannot begin until the first of the month. This limitation on advance payments of the premium tax credit and cost-sharing reductions also applies to individuals enrolling mid-month as a result of birth, adoption or placement for adoption. As an exception to the effective dates above, we specified in § 155.420(b)(2)(ii) that in the case of marriage or in the case where a qualified individual loses minimum essential coverage, the Exchange must always ensure coverage is effective on the first day of the following month, consistent with HIPAA rules. We clarify that to qualify for the special enrollment period under § 155.420(d)(9) individuals must demonstrate their exceptional circumstances to the Exchange, in accordance with guidelines issued by HHS. In § 155.420(e) we clarify that loss of coverage includes those

circumstances described in 26 CFR 54.9801–6(a)(3)(i) through (iii). Finally, we remove the restrictions in § 155.420(f) that had previously prohibited individuals from moving between metal levels during special enrollment periods.

e. Termination of Coverage (§ 155.430)

We proposed that the Exchange must permit an enrollee to terminate his or her coverage in a QHP with appropriate notice to the Exchange or the QHP. We proposed that the Exchange may initiate termination of an enrollee's coverage in a QHP, and must permit a QHP issuer to terminate such coverage under a specific list of circumstances: the enrollee is no longer eligible for coverage; the enrollee obtains other minimum essential coverage; payment of premiums cease; the enrollee's coverage is rescinded in accordance with § 147.128 of this title; the enrollee's QHP is terminated or decertified; or the enrollee changes from one plan to another during the annual open enrollment or a special enrollment period in accordance with sections § 155.410 and § 155.420.

We also proposed that the Exchange establish maintenance of records procedures for termination of coverage, track the number of individuals for whom coverage has been terminated and submit that information to HHS promptly and without undue delay, establish terms for reasonable accommodations for individuals with mental or cognitive conditions, and retain records in order to facilitate audit functions.

Additionally, we proposed that in the case of a termination requested by an enrollee, the last day of coverage for an enrollee is the termination date specified by the enrollee, provided that the Exchange and QHP receive reasonable notice. We proposed that if the Exchange or the QHP do not receive reasonable notice, the last day of coverage is the first day after a reasonable amount of time has passed. We proposed that in the case of a termination by the Exchange or a QHP as a result of an enrollee obtaining new minimum essential coverage, the last day of coverage is the day before the effective date of the new coverage. We solicited comments regarding how Exchanges can work with QHP issuers to implement this proposal. We also proposed standards for termination effective dates in the case of a termination by the Exchange or a QHP as a result of an enrollee changing QHPs. Finally, we proposed that for individuals not covered by the previous termination effective dates, the last day of coverage would be either the fourteenth or the last day of the month, depending on when termination of coverage was initiated.

Comment: A handful of commenters asked us to clarify what length of time would qualify as ''reasonable notice,'' as referenced in the proposed rule in § 155.430(b)(1). Some commenters suggested 24 hours while others suggested 30 days. The most common suggestion was 14 days. Other commenters requested that the final rule specify the methods consumers may use to notify their intent to terminate coverage.

Response: In this final rule, we clarify in § 155.430(d)(1) that ''reasonable notice'' is defined as 14 days from the requested date of termination. We want to ensure that individuals who have access to other coverage sources do not need to maintain Exchange coverage longer than necessary. In § 155.430(d)(2)(ii) of the final rule, we further state that the date of termination of coverage is 14 days from the request if the enrollee does not give reasonable notice to terminate coverage. We also note in § 155.430(d)(2)(iii) that coverage may be terminated in fewer than 14 days, per the request of the individual, if his or her QHP issuer is able to effectuate terminations more quickly. We do not specify how an individual will notify the Exchange that they wish to terminate coverage; rather, we leave this up to States to define how such transmissions may be received. This is in part because a request for termination may be received through either the Exchange or the QHP, and also because we wish to allow maximum flexibility to Exchanges.

Comment: Several commenters requested clarification regarding how the grace period for non-payment of premiums would work for individuals receiving advance payments of the premium tax credit and whether these policies differ for those who are not.

Response: We clarify in § 155.430(b)(2)(ii)(A) and (B) of this final rule that the grace periods for non-payment of premiums are not the same for individuals receiving advance payments of the premium tax credit and other enrollees. The 90-day grace period for non-payment of premiums for individuals receiving advance payments of the premium tax credit is addressed in § 156.270(d). In § 155.430(d)(5) of the final rule, we clarify that the last day of coverage for individuals not receiving advance payments of the premium tax credit should be consistent with existing State laws regarding grace periods for non-payment.

Comment: One commenter suggested that Exchanges be allowed to designate either the Exchange or the QHP to receive termination notifications in order to reduce duplication. A few commenters did not support the proposed standard in § 155.430(c) that QHP issuers report termination of coverage data to HHS because of privacy concerns.

Response: We did not accept the commenter's recommendation. Regardless of which entity the enrollee contacts to terminate coverage, the Exchange and QHP issuers will need to notify the other entity of the enrollee's coverage status to keep updated enrollment records. In addition, HHS needs to know when coverage is terminated to stop advance payments of the premium tax credit. As such, we maintain the reporting standards in § 155.430(c) in this final rule.

Comment: A few commenters asked that language in proposed § 155.430(c)(3), which directs QHP issuers to make reasonable accommodations when terminating coverage for individuals with mental or cognitive conditions, be broadened to include all individuals with disabilities, not just individuals with mental or cognitive disabilities.

Response: We broaden the final rule in § 155.430(c)(3) to state that reasonable accommodations must be undertaken when terminating coverage for individuals with disabilities as defined by the Americans with Disabilities Act.

Comment: A handful of commenters thought that provisions of section 2703 of the PHS Act were in conflict with the termination provisions contained in the Exchange establishment proposed rule in § 155.430(d)(2) because the proposed rule outlined dates of termination when an enrollee gains other minimum essential coverage. Commenters interpreted this to mean that an individual must terminate his or her Exchange coverage and said that issuers cannot terminate an individual's coverage because they gain access to other minimum essential coverage.

Response: We removed language indicating that a QHP must terminate an enrollee's coverage should they gain access to other minimum essential coverage in the final rule. Therefore, we do not believe there is a conflict with section 2703 of the PHS Act. We note, however, that the enrollee would no longer be eligible for advance payments of the premium tax credit or cost-sharing reductions if they have access to other minimum essential coverage.

Comment: Several commenters requested that CMS put in place

''safeguards'' so as to minimize or eliminate coverage gaps for individuals who become newly eligible for Medicaid, CHIP, or the BHP. Other commenters requested that individuals not have their Exchange coverage terminated when they become eligible but do not enroll in Medicare. Many other commenters recommended that the final rule state that individuals cannot be automatically terminated from Exchange coverage should they be found eligible for Medicaid, CHIP, or the BHP.

Response: In order to address these concerns, we have added § 155.430(d)(2)(iv) to the final rule to specify that if an individual enrolls in Medicaid, CHIP, or the BHP and wishes to terminate his or her Exchange coverage, then the last day of Exchange coverage is the day before such other coverage begins. We note that neither the proposed nor the final rule state that individuals will automatically be terminated from Exchange coverage should they be found eligible for Medicare. We also note that we remove proposed § 155.430(d)(4) from this final rule because the provisions are no longer necessary given the termination dates outlined in § 155.430(d)(1–6) of the final rule.

Comment: Some commenters requested that the Exchange establish a broad definition of ''minimum essential coverage,'' as well as flexibility in terms of when coverage is terminated because an enrollee gains access to other minimum essential coverage.

Response: We do not define minimum essential coverage in this final rule as this definition is included in section 5000A(f) of the Code. Individuals do not have to terminate coverage and QHP issuers must not terminate coverage when an individual becomes enrolled in other minimum essential coverage unless such individual requests a termination. In § 155.430(d)(2) of this final rule, we clarify that the last day of coverage when an enrollee gains access to other minimum essential coverage is the date requested by the enrollee, should they give reasonable notice unless the QHP issuer can effectuate the termination earlier, or, the day before new coverage begins if the enrollee becomes eligible for Medicaid, CHIP, or the Basic Health Program. Individuals and QHP issuers do not have to terminate coverage when an individual becomes enrolled in other minimum essential coverage. However, if an individual is eligible for or enrolled in other minimum essential coverage, such individual may no longer be included in the coverage family, as indicated in § 155.305(f)(1)(B) and can no longer receive advance payments of the premium tax credit or cost-sharing reductions.

Comment: A few commenters asked that HHS track reasons for termination of coverage.

Response: Additional details regarding data that must be submitted to HHS will be addressed in future guidance.

Comment: Several commenters noted that the proposed termination effective date in § 155.430(d)(3) was inaccurate as it was prospective, when rescission is by definition retrospective.

Response: We removed § 155.430(d)(3) in the final rule to eliminate a date of termination for a rescission in accordance with § 147.128. The termination of coverage date will vary based on the situation.

Summary of Regulatory Changes

We are finalizing the definitions proposed in § 155.430 of the proposed rule, with the following modifications: we clarified paragraph (b)(1) to specify that an enrollee must be permitted to terminate his or her coverage, including as a result of obtaining other minimum essential coverage. In new paragraph (b)(2)(A), we clarified that enrollees receiving advance payments of the premium tax credit will be terminated from coverage when the grace period described in § 156.270 is exhausted. In § 155.430(c)(2) we clarified that the Exchange must transmit data on terminations to QHP issuers and HHS promptly and without undue delay. We also broadened the regulation text in § 155.430(c)(3) regarding individuals with disabilities to state that QHP issuers must create standards to accommodate all individuals with disabilities when terminating such individuals' coverage, and defined individuals with disabilities as those groups identified under the Americans with Disabilities Act. In addition, in paragraph § 155.430(d)(1) we defined ''reasonable notice'' given by the enrollee to the Exchange or QHP issuer to terminate coverage as 14 days.

In paragraph § 155.430(d)(2), we described the last day of coverage as the date specified by the enrollee; fourteen days after the termination date requested by the enrollee, if the enrollee does not provide reasonable notice; or fewer than 14 days if the individual's QHP issuer is able to terminate coverage more quickly. Paragraph (d)(3) was added to clarify that for an enrollee who is no longer eligible for coverage through the Exchange, the last day of coverage is the last day of the month following the month in which notice described by § 155.330(e) is sent by the QHP. We noted in new paragraph (d)(4) that for an enrollee receiving advance payments of the premium tax credit, the last day of coverage will be the last day of the first month of the grace period. In paragraph (d)(5) we noted that the last day of coverage for non-payment of premiums for enrollees not receiving advance payment of the premium tax credit is in accordance with State law.

6. Subpart H—Exchange Functions: Small Business Health Options Program (SHOP)

The Affordable Care Act directs each State that chooses to operate an Exchange to establish insurance options for small businesses through a Small Business Health Options Program (SHOP). States that choose to operate an Exchange may also merge SHOP with the individual market Exchange.

a. Standards for the Establishment of a SHOP (§ 155.700)

In § 155.700, we proposed the general standard that an Exchange must provide for the establishment of a SHOP that meets the standards of this subpart.

Comment: Some commenters requested that, in the case of a State that establishes either a SHOP or an Exchange serving the individual market, but not both, the Secretary certify this as an Exchange in accordance with the Affordable Care Act.

Response: Section 1311(b) of the Affordable Care Act envisions an Exchange that both facilitates the purchase of QHPs and provides for the establishment of a SHOP. We interpret this to mean that a State that fails to fulfill both standards has not established an Exchange in accordance with the Affordable Care Act.

Comment: Some commenters proposed that the SHOP may want to fulfill additional functions outside the scope of the proposed rule in order to offer employers a streamlined experience when managing their employee benefits. These commenters proposed that the SHOP sell other types of insurance, administer COBRA on behalf of participating employers, administer flexible spending accounts, assist small employers in setting up Section 125 plans, and oversee wellness programs.

Response: Section 155.1000(b) directs the Exchanges to only offer health plans that have been certified as QHPs. We will take these comments into account as we consider future guidance on the offering of other products on the Exchange.

Comment: One commenter requested that we clarify the meaning of ''coordination'' and sharing of

information between the Exchange and the SHOP as described in the preamble to the proposed rule.

Response: As discussed in the proposed rule, there are many economies of scale that may arise from integrated Exchange and SHOP establishment. We believe that there are natural opportunities for the Exchange and the SHOP to benefit from shared data sources and coordinated activities.

Comment: One commenter discussed the possible use of health reimbursement arrangements from multiple employers as a means of purchasing coverage through the SHOP, aggregating premium contributions from multiple employers to support the employee's purchase of a QHP.

Response: The possible use of different forms of health reimbursement arrangement to purchase coverage through the Exchange or the SHOP is beyond the scope of this final rule, and will be addressed in future guidance.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.700 of the proposed rule, with one modification: in new paragraph (b), we added a definition of ''group participation rule.''

b. Functions of a SHOP (§ 155.705)

In § 155.705, we proposed the minimum functions of a SHOP. The SHOP must carry out all the functions of an Exchange described in this subpart and in subparts C, E, and K of this part, except for standards related to individual eligibility determinations, enrollment standards related to qualified individuals, standards related to the premium tax credit calculator, standards related to exemptions from the individual coverage requirement, and standards related to the payment of premiums by individuals, Indian tribes, tribal organizations, and urban tribal organizations.

We also proposed that a SHOP must adhere to additional enrollment and eligibility standards described in § 155.710, § 155.715, § 155.720, § 155.725, and § 155.730. In addition, the SHOP must at a minimum facilitate the special enrollment periods described in § 156.285(b)(2). Specifically, we proposed that all of the special enrollment periods that apply to individual market coverage in the Exchange also apply in the SHOP, with the exception of special enrollment periods associated with a change in citizenship status or lawful presence or eligibility for advance payments of the premium tax credit or cost-sharing reductions. We noted that the proposed rule did not eliminate any special enrollment periods established by other laws (including, but not limited to, HIPAA (Pub. L. 104–191)). We also clarified that the two exceptions described above also apply to qualified employees in a SHOP. We invited comment on special enrollment periods for the SHOP and how they might differ from those that would apply to the Exchange for the individual market.

We proposed that a qualified employer may choose a level of coverage under section 1302(b) of the Affordable Care Act, within which a qualified employee may choose an available plan at that level of coverage. We also provided flexibility for a SHOP to choose additional ways for qualified employers to offer one or more plans to their employees and listed several potential options. We sought comment on our proposed approach, which established a standard for employee choice within a level of cost sharing while providing SHOPs the option to offer broader employee choices among plans of different levels of cost sharing.

We also invited comment on whether QHPs offered in the SHOP should waive application of minimum participation rules at the level of the QHP or issuer; whether a minimum participation rule applied at the SHOP level is desirable; and if so, how the rate should be calculated, what the rate should be, and whether the minimum participation rate should be established in Federal regulation.

To simplify the administration of health benefits among small employers, we proposed that the SHOP allow qualified employers to receive a single monthly bill for all QHPs in which their employees are enrolled and to pay a single monthly amount to the SHOP. We further proposed that the SHOP collect from employers offering multiple coverage options a single cumulative premium payment.

We proposed three unique criteria for certification for a SHOP: rate setting and premium payment standards; enrollment period standards; and enrollment process standards. Specifically, we proposed that the SHOP direct all QHP issuers to make any changes to rates at a uniform interval that is either monthly, quarterly, or annually. As described in § 155.725, we proposed to permit rolling enrollment in a SHOP, which allows qualified employers to purchase coverage in QHPs at any point during the year. We invited comment on whether we should allow a more permissive or restrictive timeframe than monthly, quarterly, or annually. We also invited comment on what rates should be used to determine premiums during the plan year.

We also proposed that if a State merges the individual and small group risk pools, the Exchange may only offer QHPs to employers and employees that meet the deductibles set forth in section 1302(c)(2)(A) of the Affordable Care Act. If a State does not merge the individual and small group risk pools, we proposed that a SHOP may only make small group QHPs available to qualified employees.

Finally, we proposed to codify the statutory option for States to allow insurers in the large group market to sell large group products to large groups through the SHOP beginning in 2017.

Comment: We received several comments regarding the proposed exclusion of a premium calculator from the minimum functions for the SHOP in proposed § 155.705(a)(3). Some commenters requested that a premium calculator be included, arguing that it assists employers in estimating their total costs. Other commenters noted that instead of providing individuals with an estimation of their cost of coverage after any applicable tax credits or cost sharing reductions, a premium calculator in the SHOP may show employees their premiums after any applicable employer contributions.

Response: We believe that a premium calculator will assist employees in determining their cost of coverage after any applicable employer contribution at little to no additional burden on SHOPs or employers. Therefore, we have added new § 155.705(b)(11) in this final rule to clarify that a SHOP must provide a premium calculator to qualified employers. To support States in developing a premium calculator for the SHOP, HHS will provide model computer code.

Comment: In response to the proposed § 155.705(b)(1), which stated that a SHOP must facilitate the special enrollment periods described in § 156.285(b)(2), many commenters expressed concern about the preamble discussion regarding a lack of a special enrollment period in SHOP based on change in immigration or citizenship status. These commenters recommended that, rather than clarifying that a SHOP would not need to offer a special enrollment period based on a change in immigration or citizenship status, HHS should clarify that special enrollment periods in SHOP should be based on whether an individual is newly hired by a ''qualified'' employer or whether an individual becomes a newly eligible ''qualified employee.'' Further, commenters recommended that HHS clarify that new hires or newly eligible qualified employees should not need a

special enrollment period because the qualified employers should allow them to enroll at any time during the plan year.

Response: We have modified the language in § 155.725(g) and § 156.285(b) in this final rule to clarify the provision of an enrollment period for an employee who becomes a ''qualified employee'' rather than just new hires. We believe this clarification more accurately reflects the intent that enrollment periods will be provided to those who become qualified employees outside of the initial or annual open enrollment period, such as employees who have, for example, completed an employer's waiting period for benefits, changed from part time to full time status, or are newly hired.

Comment: We received numerous comments in response to proposed § 155.705(b)(2) and (3) on the employee and employer choice provisions. Many commenters supported additional employee choice options, such as offering plans across cost-sharing levels. Other commenters supported more limited employee choice options, often expressing concern that allowing employee choice across cost-sharing levels and even within a cost-sharing level would result in substantial risk selection. Some commenters supported broad employer choice to offer either a wider or narrower range of employee choices, including offering a single QHP. Several commenters suggested that the Affordable Care Act directs the SHOP to give employers the option to offer a single QHP. One commenter suggested initially implementing a pure employer choice model with no employee choice. A few commenters suggested adding a defined contribution model to the list of additional choice options from the preamble to the proposed rule.

Response: We believe the proposed rule appropriately balances the employee choice standards of the Affordable Care Act with flexibility for SHOPs to allow employers greater choice in their plan offering options. Under this model, employees will likely have more plan choice than they currently have in the small group market, where traditionally an employer offers only one plan to its employees.[9] However, nothing in the Affordable Care Act limits a SHOP's ability to offer an employer additional options, including choice across cost-sharing levels. We believe that States and SHOPs are best positioned to strike the proper balance among competing priorities: flexibility, meaningful consumer choice, and protection of the market against risk selection. Thus, we have retained the proposed wording of § 155.705(b)(2) and (b)(3) in the final rule.

We also note specifically that the SHOP may allow employers to offer only one plan to its employees. We believe this is supported by section 1312 of the Affordable Care Act, which defines a ''qualified employer'' as a small employer that elects to make all full-time employees eligible for one or more QHPs offered in the small group market through the Exchange. However, we do not believe that this definition establishes that the SHOP must give employers the option to offer only a single plan.

With regard to the comments on defined contribution, we note that the method through which an employer offers QHPs to its employees is independent of how the employer chooses to contribute toward the premium cost of coverage.

Comment: One commenter expressed concern that allowing employers to enroll their qualified employees into a single QHP may trigger the application of ERISA, and that the Affordable Care Act was intended to supersede ERISA and provide stronger Federal and State protections to consumers.

Response: Issues on the application of ERISA are within the purview of Department of Labor. In this rule, we clarify that a SHOP may permit employers to offer employees a single QHP.

Comment: One commenter on proposed § 155.705 requested that HHS clarify whether the employer or the SHOP will be responsible for maintaining records on employee QHP selections, and further expressed concern that the employer would be unable to monitor its employees' QHP selections.

Response: As described in § 155.705(b)(4)(i) of this final rule, the SHOP is responsible for providing each qualified employer with a bill listing the employees enrolled under that employer, the QHP each employee is enrolled in, and the cost of the QHP.

Comment: We received several comments regarding the proposed § 155.705(b)(4), which stated that a SHOP must provide a ''single bill'' to qualified employers and aggregate premium payments from employers. Many commenters supported this proposal, noting that it was essential to the effective operation of providing employees with a choice of QHP and should ease the burden on small employers of administering group health benefits. Some commenters recommended that the single bill list for each employee the portion of the premium the employee is responsible for and the portion of the premium for which the employer is responsible, while others suggested that the SHOP assist employers in calculating an average premium for its employees. In contrast, other commenters suggested that premium aggregation should not be a minimum function of the SHOP or should be optional for employers not providing their employees with a choice of QHP. Some commenters noted that health plans currently provide their own the billing services and that a standard on the SHOP to aggregate premiums may add to the administrative cost of selling QHPs through the SHOP.

Response: We believe that premium aggregation dramatically decreases the burden on an employer of participating in the SHOP by permitting the employer to write a single check for the total premium amount due. We do not believe that SHOP premium aggregation will increase the administrative burden on issuers who already perform billing services, because such issuers will no longer have to submit, track, and support a large number of paper bills to individual employers. Further, we believe that the process of resolving discrepancies will be simplified, since the issuer only needs to reconcile with one entity—the SHOP.

Additionally, we believe that bills provided by the SHOP should contain in addition to the total amount due by the employer, the portion of each employee's premium for which the employer is responsible and the portion for which the employee is responsible, and have revised paragraph § 155.705(b)(4)(i) of this final rule to reflect this clarification. We note that this information may be collected on the SHOP single employer application. The SHOP may also include an average premium on the billing statement to assist employers in smoothing premium costs between employees.

Comment: Some commenters responding to proposed § 155.705 requested clarification regarding procedures for dispute resolution for potential scenarios where the SHOP failed to remit payment to QHP issuers in a timely manner or failed to collect the correct amount from employers. One commenter recommended that proposed § 155.720(d) allow a grace period for employees and employers for making premium payments based on evidence of a ''good faith'' effort.

[9] Exhibit 4.2: Among Firms Offering Health Benefits, Percentage of Covered Workers in Firms Offering One, Two, or Three or More Plan Types, by Firm Size, 2011, *Employer Health Benefits 2011 Annual Survey*. Kaiser Family Foundation.

Response: Because States vary dramatically in statutory and regulatory standards related to non-payment or late payment of premiums, we do not believe a Federal uniform standard and process could effectively prevent such errors. Instead, we encourage SHOPs to create standard operating procedures regarding the payment and remittance of premiums. We also recommend that SHOPs standardize grace periods across QHPs. Because proper oversight of the flow of funds is essential, we direct the SHOP to maintain records and evidence of standard accounting procedures in order to allow for effective auditing of the premium aggregation service.

Comment: Commenters generally supported the option for a State to merge the individual and small group markets subject to the provisions of proposed § 155.705(b)(7).While commenters had a variety of views on the advisability of merging the markets, most commenters agreed that, if a State merges the markets, QHPs offered to small employers in the merged market must meet the maximum deductible provision in section 1302(c) of the Affordable Care Act. One commenter said that QHPs in a merged market should not be subject to a maximum deductible, and another commenter stated that there should be no restrictions on the deductible in the small group market.

Response: We do not believe that the statute allows issuers who participate in a merged market to be exempted from offering small businesses the maximum deductible in the Affordable Care Act; therefore, we are finalizing § 155.705(b)(7) as proposed.

Comment: Commenters expressed concern that limiting employees to small group market QHPs rather than in any QHP that meets the maximum deductible provision in section 1302(c) of the Affordable Care Act may make it more difficult to achieve portability of coverage across employment situations, including periods of unemployment and self-employment, and may complicate the aggregation of employer contributions from different employers. The commenters asked that the standard be changed or removed in the final rule.

Response: While we understand the concern about portability between small group and individual market products, section 1311(b)(1)(B) of the Affordable Care Act clearly states that the SHOP is ''designed to assist qualified employers in the State who are small employers in facilitating the enrollment of their employees in QHPs offered in the small group market in the State.'' We have therefore retained the language in § 155.705(b)(8) in this final rule.

Comment: Several commenters expressed concerns about the possibility of adverse selection and other market disruptions that might result from a State's choice to allow large group market issuers to offer QHPs in the large group market through the SHOP. Two commenters specifically expressed concern about an automatic SHOP expansion to the large group market. Several commenters recommended that States not expand the SHOP; one commenter suggested that HHS delay the expansion; and one commenter asked that HHS create safeguards to prevent adverse selection. Finally, one commenter asked that we interpret section 1312(f)(2)(b) of the Affordable Care Act to allow States the latitude to expand the SHOP earlier than 2017.

Response: Section 2701(a)(5) of the PHS Act provides that if the State exercises the option of offering large group market QHPs in the SHOP, the rating rules in section 2701 that apply to the small group market will also apply to all coverage offered in that State's large group market, except for self-insured group health plans. A State must specifically elect the expansion. We also do not believe that we have the authority to delay—or to allow earlier implementation of—the State's ability to make this election. Accordingly, we are not modifying the final rule to provide for any such modifications.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.705 of the proposed rule, with the following modifications: in paragraph (b)(4)(i), we clarified the data elements that must be included in the monthly bill sent by the SHOP. In new paragraph (b)(4)(iii), we added a standard for the SHOP to maintain books, records, documents, and other evidence of accounting procedures and practices of the premium aggregation program for each benefit year for at least 10 years, to conform to the standards for the individual Exchange. We also clarified in paragraph (b)(5) that the SHOP must ensure that each QHP meets the certification standards in § 156.285. In new paragraphs (b)(10) and (11), we noted that the SHOP may authorize minimum participation standards on certain conditions, and established that the SHOP must develop a premium calculator to assist qualified employers and employees. Finally, we made several technical clarifications and modifications.

c. Eligibility Standards for SHOP (§ 155.710)

In § 155.710, we proposed the eligibility standards for qualified employers and qualified employees seeking to purchase coverage through a SHOP, and proposed to codify the general standard that the SHOP make QHPs available to qualified employers. Specifically, we proposed that the SHOP ensure that an entity is a small employer, or an employer with no fewer than one employee and no more than 100 employees, unless a State elects to limit enrollment in the small group market to employers with no more than 50 employees until January 1, 2016.

We also proposed to define ''employer,'' ''small employer,'' and ''large employer'' based on the PHS Act, and to adopt the PHS Act methodology for counting employees, where employees are counted equally regardless of their status as a part time employee or full time employee. Noting that States use a variety of methods to determine employer size for purposes of determining eligibility for the small group market, we solicited comment on this approach.

We further proposed that the SHOP must ensure a qualified employer provides an offer of coverage through a SHOP to all of its full-time employees, and that the employer can elect to cover all employees through the SHOP serving the employer's principal business address or by providing coverage to each eligible employee through the SHOP serving the employee's primary worksite. In cases where the employer elects to cover all employees through the SHOPs serving their worksites, we proposed that a SHOP must accept the application of such an employer, subject to any minimum participation rules authorized by the SHOP. In addition, we proposed to allow an employer participating in the SHOP to continue its participation if the number of workers employed fluctuates after the employer's initial eligibility determination. We also clarified that only an employee who receives an offer of coverage through the SHOP from a qualified employer may be a qualified employee.

Comment: Many commenters addressed the question of whether businesses consisting entirely of sole proprietors, 2 percent S-corporation shareholders, and their family members, with no common law employees, should be eligible to purchase coverage through a SHOP. Several commenters were in favor of either including sole proprietors in the definition of eligible employer or allowing States to decide whether to expand their definition of a small group to encompass sole proprietors, stating that this would be analogous to the HIPAA interpretation that States could extend HIPAA protections to more

employers. Other commenters suggested deferring to State definitions of small group to avoid confusion and minimize possible differences between the SHOP and the outside market.

Many commenters supported allowing sole proprietors to choose either Exchange individual market or SHOP coverage. Some commenters suggested deferring to State law to allow those States to continue offering small group coverage to sole proprietors. Many other commenters supported the proposed rule's exclusion of sole proprietors from the small group market, noting that the current rationale for allowing sole proprietors to purchase in the small group market—to provide access to a guaranteed issue product with modified community rating—will not be relevant in 2014 because of individual market reforms. Several of these commenters suggested that the final rule make clear that sole proprietors are eligible for coverage in the Exchange. Two commenters suggested using the COBRA standard to determine the number of employees, which would also exclude sole proprietors. Other commenters who supported the rule as proposed suggested that allowing sole proprietors and S-corporation owners a choice between markets would create possible adverse risk selection.

Response: The Affordable Care Act and the proposed rule base their definitions of ''employer,'' ''employee,'' ''small employer,'' and ''large employer'' on the definitions in the Public Health Service Act (PHS Act). Section 2791 of the PHS Act incorporates by reference the definition of employee in section 3(6) of ERISA. Further, section 2791 provides that an employer is defined by reference to section 3(5) of ERISA. To be an employer eligible to purchase coverage through the SHOP, the employer must employ at least one common law employee. Under 29 CFR 2510.3–3, an employee would not include a sole proprietor or the sole proprietor's spouse.

We find no authority to interpret what constitutes a group health plan differently than set forth in the proposed rule. And, we note that even though both markets will have guaranteed issue and similar rating rules, enrollment of individuals is limited to the annual open enrollment period while enrollment of groups can occur throughout the year. We have therefore retained the definitions in proposed § 155.20, and our interpretation of what constitutes a group health plan.

Comment: A number of commenters addressed the issue of how employees should be counted in determining employer size. Commenters noted that States use different methods to calculate employer group size when determining small group market eligibility. Several commenters noted that there are also different Federal methods for determining employer size for different purposes, and that these differing methods may be confusing to small employers. While some commenters supported the proposed approach, to count all full-time and part-time employees, other commenters suggested specific alternatives, including but not limited to a full-time equivalent method like that used in section 4980H of the Code, as added by section 1513 of the Affordable Care Act, to determine whether an employer is a large employer; the full-time equivalent method used to determine whether Federal COBRA continuation of coverage standards apply; or counting full-time employees only. Finally, a number of commenters suggested that each Exchange defer to the applicable State's method of determining group size or transitioning from current State methods of counting employees to a Federal method.

Response: CMS has previously issued guidance on determining employer size that includes part-time employees in the count.[10] For example, the method described in the preamble to the proposed rule would count part-time employees as full employees. A second method proposed in a 2004 proposed rule issued by the Department of the Treasury, the Department of Labor, and HHS, in which the number of full-time equivalent employees is determined.[11] Because of the range of comments received to the proposed rule and because the method of counting employees has implications that extend beyond the operation of the SHOP, we are not finalizing at this time a rule for determining employer size. We are considering future rulemaking to address the method of determining employer size for purposes of deciding whether an employer is a small employer or a large employer.

Comment: Several commenters suggested that the proposed rule articulate the method of determining whether a small employer is subject to or exempt from the shared responsibility standards, since that determination is different from the determination of eligibility for participation in the SHOP.

Response: Formal guidance about the method of determining whether a small employer is subject to the shared responsibility provisions is outside the scope of this final rule.

Comment: Several commenters supported the flexibility of the employer and employee eligibility standards in proposed § 155.710, including allowing employers with worksites in the service areas of multiple SHOPs to offer coverage to their employees through the SHOP serving the employees' worksites. Some commenters requested clarification regarding the coordination of information necessary for the effective implementation of such an eligibility standard. Other commenters requested clarification of how employer groups can calculate premiums in a way that mitigates the effects of age rating in instances where workers obtain coverage through more than one Exchange. Finally, one commenter recommended that employee eligibility be limited to the State in which the employer's headquarters is located.

Response: We recognize the benefits of allowing employers in multiple States flexibility regarding the SHOPs in which they may opt to enroll. We believe this eligibility standard does not establish a significant level of coordination between SHOPs, though nothing in this section would preclude a SHOP from establishing processes or standard operating procedures to coordinate across service areas. Employers electing to participate in multiple SHOPs must meet the eligibility standards of each SHOP in which they wish to participate and prior to 2017 may not employ more than 100 employees in total in accordance with section 1312(f)(2) of the Affordable Care Act. We acknowledge, however, that standards related to the calculation of premiums in the small group market may vary from State to State in a manner that does not allow differences in cost due to age or location to be spread easily among all employees across State lines.

Comment: One commenter objected to the proposed § 155.710(b)(2), which stated that the SHOP must ensure that a qualified employer provides an offer of coverage through the SHOP to all full-time employees because it places an administrative burden on the SHOP and would be difficult to enforce. Other commenters suggested that a multi-employer plan should be able to offer

[10] HCFA Insurance Standards Bulletin Series No. 99–03 (September 1999), posted online at *https://www.cms.gov/HealthInsReformforConsume/downloads/HIPAA–99–03.pdf.*

[11] Notice of Proposed Rulemaking for Health Coverage Portability: Tolling Certain Time Periods and Interaction with the Family and Medical Leave Act Under HIPAA Titles I and IV, 69 CFR 78000–78825.

coverage to its participants through the SHOP only to the employees of a participating small employer covered under a collective bargaining agreement.

Response: Our eligibility process allows the SHOP to accept an attestation by an employer that it will offer coverage to all of its full-time employees, minimizing the commenter's concern about burden. Multiemployer plans that qualify as QHPs may offer coverage in SHOP but, like other QHPs, must follow rules applicable to QHPs. Additionally, we intend to address commenters' concerns surrounding multi-employer plans in future guidance.

Comment: One commenter suggested that additional guidance might be needed with regard to multi-employer plans purchasing coverage through the SHOP, particularly with regard to determining the work site, establishing eligibility and enrollment procedures, billing and premium collection, and other administrative procedures.

Response: Multiemployer plans can play a role as an aggregator of premium contributions, and an arranger of coverage, and intend to address commenters' concerns in future guidance.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.710 of the proposed rule without substantive modification.

d. Eligibility Determination Process for SHOP (§ 155.715)

In § 155.715, we proposed that a SHOP determine eligibility consistent with the standards described in § 155.710. Specifically, we proposed that a SHOP must verify either through the attestation of the employer or through additional methods developed by the SHOP, that a qualified employer has fulfilled all of the standards specified in § 155.710, including that the employer is a small employer, it is offering coverage through the SHOP to all full-time employees, as well as verifying that at least one employee works in the SHOP's service area.

Consistent with the statutory directive for HHS to provide a single, streamlined application form, we also proposed that the SHOP use only two application forms: one for qualified employers and one for qualified employees. We further proposed that for the purpose of determining eligibility in the SHOP, the SHOP may use the information attested to by the employer or employee on the application but must, at a minimum, verify that an individual attempting to enter the SHOP as an employee is listed on the qualified employer's roster of employees to whom coverage is offered. We also proposed that the SHOP have processes to resolve occasions when the SHOP has a reason to doubt the information provided through the employer and employee applications. In addition, similar to the individual market Exchange standards, we proposed that the SHOP notify an employer or employee seeking coverage of the SHOP's eligibility determination and the employer or employee's right to appeal.

Finally, we proposed that if a qualified employer ceases to purchase any coverage through the SHOP, the SHOP must ensure that: (1) each QHP terminates the coverage of the employer's qualified employees enrolled in QHPs through the SHOP; and (2) each of the employer's qualified employees enrolled in a QHP through the SHOP is notified of the employer's withdrawal and its termination of coverage prior to such withdrawal and termination. We solicited comments on whether this notification must inform the employee about his or her eligibility for a special enrollment period in the Exchange and about the process of being determined eligible for insurance affordability programs.

Comment: We received several comments regarding the eligibility determination process for employees proposed in § 155.715. Some commenters opposed the processes for individual employee verification, stating that the process may increase the administrative burden on businesses. Others suggested that the SHOP should not verify employee eligibility and questioned the Secretary's authority for such verifications. Commenters recommended that any SHOP eligibility process conform to the standards of sections 1411(g) and 1411(h) of the Affordable Care Act. Some additionally proposed an alternative process whereby employers applying for coverage in a SHOP present a list of qualified employees with reference to associated Employment Identification Numbers (EIN) in order to prevent employer and employees applicants from gaming the eligibility process. Commenters additionally recommended that the final rule prohibit the SHOP from collecting information for verification of citizenship status or eligibility for the advance payment of the premium tax credit, as described in sections 1411(b)(2) or 1411(c) of the Affordable Care Act.

Response: We note that in accordance with § 155.705(a), SHOPs must comply with the standards of part 155 subpart C including the privacy and security standards of § 155.260 and § 155.270. These sections implement section 1411(g) of the Affordable Care Act.

The employee eligibility process as proposed would direct the SHOP to verify only that an employee applying for coverage through the SHOP is a qualified employee—an employee offered coverage by a qualified employer. We believe that such verification is necessary to ensure the effective operation of the SHOP and the prevention of abuse. An employee applying to the SHOP for coverage may easily be both verified and determined to be a qualified employee by the SHOP solely on the list of qualified employees provided to the SHOP by the employer.

Because citizenship verification is the responsibility of the employer at the time of hiring, we have added language in this final rule to clarify that the SHOP will not perform re-verification of citizenship status.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.715 of the proposed rule, with the following modifications: in new paragraph (c)(3), we clarified that a SHOP may only collect the minimum information necessary to verify the information provided in an application. In new paragraph (c)(4) we reiterated that the SHOP may not perform individual eligibility determinations as described in sections 1411(b)(2) or 1411(c) of the Affordable Care Act. In paragraph (d)(1)(iv)(A), we established that the SHOP must mention an employer's right to appeal in any notice of denial of eligibility. In paragraph (g)(2), we specified that the SHOP must ensure that any employees affected by a qualified employer's withdrawal from the SHOP are notified and receive information about other coverage options. Finally, we made several changes throughout this section to improve the precision of the language used.

e. Enrollment of Employees Into QHPs Under SHOP (§ 155.720)

In § 155.720, we proposed that the SHOP establish a uniform enrollment timeline and process, standardized to a plan year, for all employers and QHPs in the SHOP. In addition, we proposed that the SHOP must ensure that qualified employees who select a QHP are notified of the effective date of coverage, whether such notice is executed by the QHP or by the SHOP.

We also proposed that information maintained by the SHOP must include records of qualified employer participation and qualified employee enrollment, and that reconciliation of enrollment information with QHPs

occur at least monthly. We invited comments on whether we should establish target dates or guidelines so that multi-State qualified employers are subject to consistent rules.

Finally, we proposed that if a qualified employee voluntarily terminates coverage from a QHP, the SHOP must notify the individual's employer.

Comment: Several commenters suggested that proposed § 155.720(a) clarify the duties of the SHOP and QHP issuers when facilitating employee enrollment into QHPs.

Response: Section 155.705 directs a SHOP to carry out the minimum functions in other subparts of the part. Consistent with the proposed rule, § 155.720(c)(2) of the final rule directs a SHOP to fulfill the standards of § 155.400, which establishes standards related to enrollment of individuals into QHPs.

Comment: One commenter requested clarification that QHP issuers do not have to participate in both the SHOP and individual Exchanges.

Response: Nothing in this part establishes that an issuer must participate in both the SHOP and the individual Exchange. However, we note that Exchanges may wish to establish such participation in both markets as a condition of certification.

Comment: One commenter to this section recommended automatic enrollment of employees into new QHPs when there are mergers between QHP issuers or when one QHP offered by a specific QHP issuer is no longer offered, but there are other options available to the individual through the same QHP issuer.

Response: We believe that States may wish to take variable approaches to managing the enrollment; and therefore, we are not establishing a standard to offer automatic enrollment in this final rule.

Comment: Several commenters to proposed § 155.720(b) recommended that the final rule afford States further flexibility with respect to enrollment timelines. A few commenters suggested that the SHOP base its timelines on eligibility rules for enrollment on the current market practices. A few commenters recommended that the final rule exclude any target dates and guidelines in § 155.720, while another commenter recommended that the rule establish basic guidelines and leave the selection of exact dates to the SHOP. Yet another commenter expressed concern that the proposed rule did not provide sufficient flexibility for industries that typically begin coverage on October 1 and recommended that SHOPs be permitted to provide special group enrollment for those groups or amend the rule to afford States greater flexibility to address those circumstances. Conversely, another commenter proposed that § 155.720 include target dates and guidelines so that multi-State employers are subject to consistent rules. One commenter supported similar enrollment processes and timelines across QHPs to allow qualified employees the greatest opportunity to select preferred plans and ease administrative burden for multi-State employers.

Response: We believe that § 155.720 provides adequate flexibility for a State to develop its process in a way that is most suitable to local situations. Thus, we have not included specific dates in the section and have allowed States flexibility to address specific needs or concerns, including current market environment and special industries.

Comment: Two commenters responding to this section and § 155.725 recommended that HHS develop a transaction standard with respect to collected enrollment information.

Response: We plan to provide guidance on the timing, format, and content of the enrollment information transmissions to QHP issuers.

Comment: Several commenters suggested proposed § 155.720(e) specify how SHOPs can ensure that QHPs provide notices to employees of effective coverage dates. One commenter supported the policy that SHOPs be held accountable for employees receiving notices of effective dates of coverage. One commenter recommended that QHPs transmit confirmation of enrollment to the SHOP, and another urged HHS not to add a standard that the SHOP must send a duplicate notification to the enrollee.

Response: SHOPs must be able to enforce the notification standard; we believe that § 155.720 provides a State with the flexibility to establish its SHOP enrollment timeline, procedures, and enforcement mechanisms that work best for the particular State. The QHP should be responsible for sending notification; we have clarified in § 155.720(e) of this final rule that a QHP, and not the SHOP, must send the notification.

Comment: In response to proposed § 155.720(f) and (g), one commenter opposed the policy for the SHOP to reconcile information and keep records, noting that it is unclear under the Affordable Care Act why SHOP should maintain records.

Response: The reconciliation of information and the retention of records of participants and participant information by the SHOP is a necessary standard for the smooth operation of the SHOP and effective oversight of the SHOP.

Comment: Several commenters to proposed § 155.720(g) supported the idea of reconciliation of enrollment information but disagreed on the frequency and on who should determine the frequency. One recommended that this paragraph establish monthly reconciliation and that SHOPs allow QHPs to query a SHOP at any time for information on qualified employers and employees. A few commenters recommended flexibility for States to establish reporting and auditing standards.

Response: We recognize the need for periodic reconciliation of enrollment information between the SHOP and the QHPs. However, States should have the flexibility to determine how often such reconciliation is necessary, provided that reconciliation is completed no less frequently than once per month. Therefore, we are not adding a more specific standard in the final rule.

Comment: In response to the standards in proposed § 155.720(h) related to termination of a qualified employee, some commenters recommended allowing SHOPs to ensure that disenrollment requests from current employees to come through the employer because such a process would ensure the employer receives notification and is able to communicate to the employee the potential consequences of disenrollment. One commenter recommended that an employee who ends employment should consult with the employer regarding available coverage options after employment ends. Another commenter recommended the notification standard be placed on the QHP issuer and not on the SHOP.

Response: We believe that § 155.720(h) of this final rule ensures that an employer will receive appropriate notification while preserving an employee's ability to terminate coverage without the added step of consulting with the employer or creating an additional administrative burden on the employer. We believe that the notification standard should remain with the SHOP and that the associated administrative burden will be minimal.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.720 of the proposed rule, with the following modification: in paragraph (f), we clarified that SHOPs must retain records for ten years, which is changed from the proposed seven years. We added new paragraph (i),

which directs the SHOP to report to the IRS employer participation and employee enrollment information for tax administration purposes. Finally, we made a few technical modifications to streamline the regulation text.

f. Enrollment Periods Under SHOP (§ 155.725)

In § 155.725, we proposed that the SHOP adhere to the start of the initial open enrollment period for the Exchange, which is October 1, 2013 for coverage effective January 1, 2014, and ensure that QHP issuers adhere to coverage effective dates in accordance with § 156.260. We noted that the initial open enrollment date represents the first date employers may begin participating in the SHOP. In addition, to align enrollment processes between the SHOP and the small group market, we proposed a rolling enrollment process in the SHOP whereby qualified employers may begin participating in the SHOP at any time during the year.

We invited comment on two provisions related to SHOP enrollment: that qualified employers may enroll or change plans once per year or during an applicable special enrollment period; and that an employer's plan may not align with the calendar year.

We also proposed an annual employer election period in advance of the annual open enrollment period, during which time a qualified employer could modify the employer contribution towards the premium cost of coverage and the plans it intended to offer to employees during the next plan year. We noted that this annual election period may be specific to each qualified employer and therefore must occur at a fixed point in the plan year, not at a fixed point during the calendar year. In addition, we proposed that the SHOP must notify participating employers that their annual election period is approaching, and solicited comment on this standard and whether we should establish that the notice be sent at a specified interval (for example, 30 days before the relevant election period).

We solicited comment on our proposal that the SHOP establish an annual employee open enrollment period for qualified employees, to occur at a fixed point during the plan year, during which the employee would have the option to renew or change coverage. We proposed that a qualified employee who is hired outside of the initial or annual open enrollment period would have a specified window set by the SHOP to seek coverage in a QHP beginning on the first day of employment. We also proposed that the SHOP establish effective dates of coverage for qualified employees consistent with § 155.720. Finally, we proposed that if an enrollee remains eligible for coverage in a QHP through the SHOP, the individual will remain in the QHP selected during the previous plan year with limited exceptions, in which case the individual would be disenrolled at the end of the coverage year. We invited comments on our approach to differentiating individual and small group market enrollment and the proposed structure for initial, rolling, and annual open enrollment through the SHOP.

Comment: In response to proposed § 155.725(a), some commenters opposed aligning the enrollment periods in § 155.725 with the individual Exchange and recommended that SHOP enrollment should be aligned with other group markets.

Response: In § 155.725(a), we align the SHOP initial open enrollment period with an individual Exchange for the first opportunity when coverage may be purchased through the SHOP. Under § 155.725(b), we establish rolling enrollment in the SHOP, which we believe is consistent with current practice in the small group market where plan years do not necessarily correspond to calendar years. We have retained these provisions in the final rule.

Comment: In response to the standards in proposed § 155.725(a)(2), one commenter requested clarification that effective dates depend on the completion of eligibility and enrollment standards, and recommend that such standards must be met by December 7, 2013 to secure a coverage effective date of January 1, 2014.

Response: A SHOP must permit an individual to enroll in a QHP only after a qualified employee has been determined eligible and has completed any enrollment standards. We believe that the standards in § 155.410 of this final rule provide sufficient time for QHP issuers to effectuate enrollment.

Comment: A few commenters on this section recommended adding a standard that SHOPs develop a plan to encourage maximum enrollment during the initial open enrollment period, noting concerns about adverse selection if certain employers wait to enroll until health care needs make it more advantageous. One commenter recommended allowing employers to pro-rate their initial year of participation and then begin their next plan year on January 1st of the following year to minimize public confusion and aid implementation.

Response: We believe that States have the flexibility under the rule to best assess their local market environment and to develop plans to encourage enrollment and discourage adverse selection.

Comment: Many commenters on proposed § 155.725(e) recommended that the annual employee open enrollment period last at least 30 days. Some commenters recommended that open enrollment should be standardized for all QHPs. Several supported a notification period for employees before the annual enrollment period. One commenter recommended the employer, and not the SHOP, decide the open enrollment period, and a few commenters recommended the Federal government defer to States to establish open enrollment periods.

Response: We have added language to § 155.725(e) of this final rule establishing a standardized open enrollment period of at least 30 days. We note that States will have the flexibility to establish open enrollment periods based on the specific market landscape of the State, and believe that § 155.725 provides that flexibility. We further believe that employees should receive a notification in advance of the open enrollment period and have added a standard in new § 155.725(f) that the SHOP provide notification to qualified employees of the open enrollment period in advance of the period.

Comment: Several commenters on proposed § 155.725(d) supported the policy that the SHOP must notify the employer in advance of the annual employer election period. A few supported a notification period of 30 days or at least 30 days, one requested flexibility in determining when employers must be notified, and one recommended that the notification period align with the outside market to prevent additional administrative burden on QHPs. Conversely, one commenter opposed a notification standard for the SHOP, stating that this function is currently handled by health insurance issuers.

Response: We believe that the SHOP should provide notification of the open enrollment period but do not believe that we should prescribe specific timing for the notification. We believe that § 155.725 of the proposed rule provides the SHOP with the requested flexibility for notification timing. Finally, we note that the SHOP is the appropriate entity to notify employers because a single employer could have employees enrolled in QHPs across several issuers. Therefore, we are not changing this standard in the final rule.

Comment: A few commenters on proposed § 155.725(c) recommended that the annual employer election

period last at least 30 days. One commenter recommended that an employer must submit an application to participate in SHOP at least 120 days prior to the start of the plan year.

Response: We recognize the importance of an annual employer election period of at least 30 days and have added language to § 155.725(c) to that effect. However, we note that States have the flexibility to establish longer annual employer election periods if they so choose.

Comment: In response to proposed § 155.725(h), one commenter requested clarification on the auto-enrollment process where a QHP ceases to exist and an individual does not select another QHP.

Response: Auto-enrollment in the SHOP is only applicable per redesignated § 155.725(i) of this final rule in situations in which a qualified employee enrolled in a QHP through the SHOP remains eligible for coverage. In such cases, the employee will remain in the QHP selected during the previous year unless the qualified employee terminates coverage, enrolls in another QHP, or the QHP is no longer available. We note that if a QHP ceases to exist, resulting in a loss of minimum essential coverage for the enrollee, the enrollee will be eligible for a special enrollment period per § 155.725(a)(3). We also note that under § 156.290(b), a QHP issuer that does not seek recertification with the Exchange for a QHP must provide written notice to each enrollee. However, in these cases where an enrollee's former QHP is no longer available, there is no auto-enrollment standard in the SHOP should the individual not select another QHP during a special enrollment period or open enrollment period.

Comment: Many commenters offered feedback on the proposed § 155.725(g), which stated that the SHOP must establish effective dates of coverage for enrollees in the SHOP. A few commenters requested that the final rule clarify the SHOP's obligation to establish coverage effective dates. One commenter recommended that coverage take effect on the first day of the month following the date of enrollment for enrollment transactions completed by the 20th of the month. In cases where enrollment is completed after the 20th, the commenter recommended that coverage take effect on the first day of the month that follows the next month. In contrast, some commenters disagreed with the policy that SHOPs must establish effective dates of coverage, noting that employers and carriers currently perform this function.

Response: Per redesignated § 155.725(h) of this final rule, the SHOP must establish coverage effective dates consistent with § 155.720. We believe that a single policy of effective dates in the SHOP ensures consistency and note that we proposed using the same effective dates as the individual Exchange for the initial enrollment period in order to increase the administrative simplicity for Exchanges and issuers. We believe the § 155.410 standards provide sufficient time for processing enrollment information before the effective date of coverage. Therefore, we are finalizing redesignated § 155.725(h), as proposed. We further note that a SHOP must not only establish effective dates but must also ensure notification of the effective dates in accordance with § 155.720.

Comment: Some commenters to § 155.725 recommended that employees receive advance notice if the QHP in which they are enrolled will no longer be offered through the SHOP for the upcoming plan year. Another commenter recommended that employees in this circumstance receive advance notice of other affordable options, including insurance affordability programs.

Response: We note that § 156.285(d)(1)(ii) of this final rule directs any QHP issuer that chooses not to renew its participation in the SHOP to notify affected enrollees and qualified employers. We believe that this notification standard, combined with the annual open enrollment period, provides sufficient opportunity for enrollees to review their coverage options and make a new plan selection. Therefore, we are not adding a notification standard in this section.

Comment: Several commenters on proposed § 155.725(f) supported the policy that SHOPs provide coverage to any new employees hired outside of the initial or annual open enrollment period and that SHOPs be able to make that coverage available on the employee's first day of employment. One commenter recommended a predetermined, regulated length of time for the enrollment period. One commenter expressed concern with the limited ability to amend an employee's coverage and recommended that employees have an opportunity to state a case for needing to change coverage similar to special enrollment rules. One commenter suggested that there should be a special enrollment period if an employer reduces its contribution. Other commenters questioned how this standard relates to probationary periods, specifically the Affordable Care Act provision that permits group plans to impose waiting periods of no more than 90 days for coverage of new employees.

Response: In general, we recognize the importance of providing coverage to new employees hired outside of the initial or annual open enrollment. Thus, we have clarified in redesignated § 155.725(g) of this final rule to assure that the SHOP provides an employee who becomes a qualified employee a period to seek coverage that would be effective on the first day of becoming a qualified employee rather than on the first day of employment. This revision refines the standard to encompass not only new employees, but also situations where an employee moves from part to full time status or completes a waiting period. In the case of a waiting period, an employee could become a qualified employee under § 155.710(e) when the qualified employer makes an offer of coverage after the waiting period is over. It still retains the ability for a new and qualified employee to seek coverage on the first day of employment. States will be able to set a time for this period under § 155.720. We believe that § 155.725 does not preclude a State from creating special enrollment periods in addition to the ones established by the rule.

Comment: One commenter on proposed § 155.725(h) recommended that because eligibility of a qualified employee to enroll in a QHP through the SHOP is available on the basis of employment by a qualified employer, the employer should be responsible for renewing its employees' coverage at the end of a plan year.

Response: We believe that § 155.725(c) adequately addresses that concern by specifically establishing that a SHOP must provide qualified employers with an annual election period in which a qualified employer may change its participation in the SHOP for the next year, including the method it makes QHPs available to qualified employees, the level of employer contribution, the level of coverage offered, and the QHP or plans offered. Therefore, we are finalizing this provision as proposed.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.725 of the proposed rule, with the following modifications: in new paragraph (a)(3) we clarified that a SHOP must provide the special enrollment periods described in § 155.420, with the exception of those described in paragraphs (d)(3) and (6) of that section. We provided in paragraph (c) that the SHOP must allow qualified employers a period of no less than 30 days to alter plan selections prior to the

open enrollment period. We established in paragraph (e) that the annual employee open enrollment period must be standardized, and must be at least 30 days. In new paragraph (f), we direct the SHOP to provide notification to a qualified employee of the annual open enrollment period. In redesignated paragraph (g) we clarified that the SHOP must offer an enrollment period to newly qualified employees. Finally, we redesignated proposed paragraphs (f), (g), and (h) as paragraphs (g), (h), and (i), respectively, and made several minor changes throughout this section to make the regulation text more precise and to add clarity.

g. Application Standards for SHOP (§ 155.730)

In 155.730, we outlined the proposed application-related standards for participation in the SHOP. Specifically, we proposed that the SHOP use a single employer application and the information the application should collect (*that is,* employer name and address, number of employees, employer identification number, list of qualified employees and SSNs). We sought comment on what, if any, other employer information SHOPs should collect via the employer application.

Similarly, we proposed that the SHOP must use a single employee application for each employee to collect eligibility information and QHP selection. We noted that a SHOP may modify or reduce the individual Exchange application for SHOP applicants, if desired and subject to approval by the Secretary. We also proposed that a SHOP may also use a model single employer application and model single employee application created by HHS or an alternative application approved by HHS. Finally, we proposed that the SHOP must allow employers and employees to submit their eligibility and enrollment information consistent with § 155.405(c).

Comment: We received several comments regarding the preamble discussion in the proposed rule that the SHOP should not make eligibility determinations for Medicaid or CHIP. Many commenters recommended that the final rule outline a role for the SHOP in providing information about these programs.

Response: There are a number of ways that employees can learn about insurance affordability programs. We do not think that the application for SHOP is the most effective venue for providing this information.

Comment: We received several comments related to the limitations on the information that may be collected on SHOP applications in accordance with proposed § 155.730(a). Some commenters requested that the final rule not impose any limitations on the information that the SHOP may request of employees, noting that such restrictions could limit how well the SHOP can serve qualified employers and qualified employees. Other commenters supported the proposed rule's focus on a simple application standard and limiting the information collected to information necessary to facilitate applications, eligibility determinations, and enrollment.

Response: We believe that limiting the collection of information on the application to data relevant for eligibility determinations, enrollment, and reporting by the SHOP or by QHP issuers balances the need to minimize the burden placed on applicants with the information needs of the SHOP and QHP issuers. Therefore, we are finalizing the provisions of § 155.730(a) as proposed.

Comment: One commenter suggested that the application collect the NAIC code of each employer applying to the SHOP under proposed § 155.730(a).

Response: We do not believe that it is essential for the SHOP application to collect each employer's NAIC code, since it is beyond what is minimally necessary for the purpose of the SHOP.

Comment: Some commenters were strongly opposed to the standard that the SHOP collect the social security number (SSN) of employees on the employer application in accordance with proposed § 155.730(a)(4). These commenters stated that effective alternate methods of authenticating employees exist, recommended that this standard be removed from the final rule.

Response: While employees may be effectively authenticated without the employer providing employee SSN on the employer application, employee taxpayer identification numbers (most commonly an employee's SSN) are needed for QHP issuers to comply with the standards of section 1502 of the Affordable Care Act. Although we retain the employees' names and taxpayer identification numbers as elements of the employer application, we have clarified in § 155.715(c)(4), that the SHOP may not re-verify the citizenship status of the employee or make a determination of eligibility for an advance payments of the premium tax credit. We note that employees already provide their Social Security number to employers for a variety of purposes and this information is disclosed by the employer to both State and Federal agencies of for such purposes as unemployment insurance and tax purposes.

Comment: Some commenters requested that the SHOP be permitted to adopt an alternative employer or employee application without obtaining formal approval from HHS, as proposed in § 155.730(e), in order to prevent the delay in the adoption of such applications. Other commenters agreed with the proposed policy that HHS approve any alternative application to ensure it meets the standards of this section.

Response: The HHS review of any proposed alternative application is intended to ensure that it conforms to the standards proposed in this section. Therefore, we are maintaining the standard under § 155.730(e), as proposed.

Summary of Regulatory Changes

We are finalizing the definitions proposed in § 155.730 of the proposed rule, with two modifications. In paragraph (e) we clarified that a SHOP may develop and submit for HHS approval an alternative application for employers and employees. Additionally, in new paragraph (g) we provide for additional safeguards to address commenters concern regarding the collection and use of dependent information for purposes other than processing enrollment in a QHP and made several minor changes throughout this section to make the regulation text more precise and to add clarity.

7. Subpart K—Exchange Functions: Certification of Qualified Health Plans

This subpart codifies section 1311(d)(4)(A) of the Affordable Care Act, which establishes that Exchanges, at a minimum, implement procedures for the certification, recertification, and decertification of health plans as QHPs, consistent with guidelines developed by HHS. This subpart also clarifies the Exchanges' responsibility related to the inclusion in the Exchange of certain multi-State plans. We note that as States establish Exchanges, each State has choices related to certification of QHPs for the Exchange through the piece of legislation, executive order, or charter that creates the Exchange. Alternatively, the Exchange itself may be able to exercise discretion under existing State and Federal law.

a. Certification Standards for QHPs (§ 155.1000)

In § 155.1000, we proposed the overall responsibilities of an Exchange to certify QHPs. We proposed that QHPs must have in effect a certification issued or recognized by the Exchange as QHPs

and that an Exchange may only make available as a QHP a health plan that has in effect a certification issued or recognized by the Exchange as a QHP. We proposed to define a multi-State plan as a plan under contract with OPM to offer a multi-State plan that offers a benefits package that is uniform in each State and consists of the benefit design standards described in section 1302 of the Affordable Care Act; meets all standards for QHPs; and meets Federal rating standards in accordance with section 2701 of the PHS Act, or a State's more restrictive rating standards, if applicable.

We proposed that an Exchange may certify a QHP if the QHP meets minimum certification standards described in subpart C of part 156 and if the Exchange determines the QHP is in the interest of qualified individuals and qualified employers in the State. We noted than an Exchange could adopt an ''any qualified plan'' certification, engage in selective certification, or negotiate with plans on a case-by-case basis; the proposal also permitted an Exchange to establish additional certification criteria.

Comment: A few commenters requested that HHS redefine a multi-State plan in proposed § 155.1000(a) as a plan that is described under section 1334 of the Affordable Care Act to ensure continuous alignment between this final rule and forthcoming regulations on multi-State plans promulgated by the U.S. Office of Personnel Management (OPM).

Response: We believe the commenters' approach would better align this final rule with forthcoming regulations on multi-State plans. Therefore, we are revising the regulation text in final § 155.1000 to reference section 1334 of the Affordable Care Act. The final rule in this subpart has been revised throughout to acknowledge the role of OPM in certifying multi-State plans.

Comment: Several commenters requested additional information on how the Office of Personnel Management will administer multi-State plans. Commenters proposed specific recommendations, including that OPM deem existing health plans that operate in multiple States as multi-State plans, or that multi-State plans include protections for certain types of benefits (*for example,* benefits related to end-stage renal disease).

Response: The standards and processes related to multi-State plans will be addressed in forthcoming regulations implementing section 1334 of the Affordable Care Act promulgated by OPM. These issues are outside the scope of this final rule, which only addresses multi-State plans in connection with Exchange obligations to recognize multi-State plans as certified by OPM.

Comment: Several commenters requested that HHS clarify the language in proposed § 155.1000(c)(2) permitting an Exchange to certify a QHP if the Exchange determines that such QHP is in the interest of qualified individuals and qualified employers.

Response: We interpret § 155.1000(c)(2), as proposed and as finalized, as providing an Exchange with broad discretion to certify health plans that otherwise meet the QHP certification standards specified in part 156 in a way that best meets the needs of local consumers and businesses. We refer commenters to pages 41891 and 41892 of the Exchange establishment proposed rule for a more comprehensive discussion of the strategies an Exchange could use to apply the ''interest'' test, including consideration of the reasonableness of the expected costs supporting the QHP's premium and cost-sharing structure, past performance of the QHP issuer, quality improvement activities, enhancements of provider networks, the QHP service area, or past rate increases.

Comment: A few commenters requested that HHS clarify the meaning of the exclusions in proposed § 155.1000(c)(2)(i) through (iii), which place certain limits on an Exchange's ability to exercise the ''interest'' test described in proposed § 155.1000(c)(2).

Response: As proposed and as finalized, § 155.1000(c)(2)(i)–(iii) codifies sections 1311(e)(1)(B)(i)–(iii) of the Affordable Care Act, which limits an Exchange's ability to apply the ''interest'' test in certifying qualified QHPs. Specifically, we clarify that an Exchange cannot exclude an otherwise eligible QHP on the sole basis that it is a fee-for-service plan, through the use of premium price controls, or because the QHP covers treatments or services necessary to prevent patient deaths that the Exchange determines are inappropriate or too costly.

Comment: One commenter requested that the final rule clarify that any certification standards or processes developed in accordance with this section apply uniformly to any subsidiary Exchanges. Another commenter requested that a QHP issuer be permitted to operate statewide, even where subsidiary Exchanges cover smaller service areas.

Response: There may be multiple compelling and appropriate reasons for a State to create additional standards, or to take a different approach to certification, in different market regions. For example, a State may wish to employ different contracting strategies in a highly competitive, urban service area versus a rural service area. Further, we believe that the definition of an Exchange in § 155.20 and the authority to have a regional or subsidiary Exchange provided in § 155.140 establish that a subsidiary or regional Exchange not only must meet all Exchange responsibilities, but also have the same authority and discretion as an Exchange that serves an entire State. Therefore, we are not establishing uniform standards for subsidiary Exchanges within a State; we note, however, that HHS must review and approve subsidiary Exchanges. We expect that States will consider the implications of developing subsidiary Exchanges, including the potential effects on issuer participation in the State.

Comment: One commenter generally expressed concern about aligning market rules and consumer protections inside and outside of the Exchange.

Response: We note that nothing in the final rule limits a State's ability to adjust market and other rules outside of the Exchange to better align with the rules and protections that exist within the Exchange.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.1000 of the proposed rule, with the following modification: we revised the definition of a multi-State plan in paragraph (a) to mean a QHP that is offered in accordance with section 1334 of the Affordable Care Act, to ensure ongoing consistency with forthcoming regulations implementing this section. In paragraph (b), we amended the provision to clarify the language.

b. Certification Process for QHPs (§ 155.1010)

In § 155.1010, we proposed that the Exchange establish procedures for the certification of QHPs that are consistent with the certification criteria outlined in § 155.1000(c). We also proposed that a multi-State plan offered through OPM be deemed certified by an Exchange and noted that multi-State plans will need to meet all the standards for a QHP, as determined by OPM. To ensure consumers have a robust selection of QHPs during the open enrollment period, we further proposed that the Exchange complete the certification of QHPs prior to the open enrollment periods established in § 155.410. Finally, we proposed that the Exchange monitor QHP issuers for demonstration

of ongoing compliance with certification standards.

Comment: In response to proposed § 155.1010(a) on QHP certification, a number of commenters expressed support for Exchange flexibility in designing the certification process. Conversely, several commenters recommended a uniform, national set of certification standards and processes and proposed specific features, such as that the certification process consider past premium increases, an issuer's medical loss ratio, quality information, or provider payment standards. Several commenters requested that the final rule provide additional detail on the certification standards that Exchanges will use to evaluate QHPs.

Response: We recognize the importance of ensuring a basic set of uniform consumer protections across all Exchange markets through the setting of minimum certification standards for QHP issuers. We believe that States are best positioned to adapt and expand on these standards to meet the needs of consumers served by the Exchange, given local market conditions. Therefore, while Exchanges have discretion to identify certification standards above and beyond those provided for in the final rule, including the features suggested by commenters, we are not specifying additional elements in this final rule.

Comment: Many commenters expressed support for a specific contracting model the Exchange could adopt in accordance with proposed § 155.1010(a); of these, approximately half endorsed an ''any willing plan'' approach, in which the Exchange would contract with all QHPs that meet the relevant certification criteria. The other half of the commenters favored more proactive forms of ''active purchasing,'' including selective contracting with QHPs.

Response: As we noted in the preamble to the Exchange establishment proposed rule, we believe that an Exchange's certification approach may vary based upon market conditions and the needs of consumers in the service area. Accordingly, in this final rule, we offer flexibility to Exchanges on several elements of the certification process, including the contracting model, so that Exchanges can appropriately adjust to local market conditions and consumer needs. An Exchange could adopt its contracting approach from a variety of contracting strategies, including an any-qualified plan approach, a selective contracting model based on predetermined criteria, or direct negotiation with all or a subset of QHPs. Therefore, we are not prescribing a specific contracting model in this final rule.

Comment: Many commenters expressed support for the provisions in § 155.1010(b) of the proposed rule related to the deemed certification of multi-State plans and emphasized the importance of creating a level playing field for all QHPs within an Exchange. Several commenters recommended that the final rule clarify that multi-State plans and CO–OPs will be treated identically to other plans; for example, multi-State plans and CO–OPs would comply with any additional certification criteria established by an Exchange, and could be excluded in States that selectively contract.

Response: The final rule establishing the CO–OP program, ''Patient Protection and Affordable Care Act; Establishment of Consumer Operated and Oriented Plan (CO–OP) Program,'' published at 76 FR 77392 (December 13, 2011) directs CO–OPs to comply with all standards generally applicable to QHP issuers. We anticipate that specific standards for multi-State plans will be described in future rulemaking by OPM in accordance with section 1334 of the Affordable Care Act.

We note that the Affordable Care Act specifically provides a deeming process for multi-State plans and CO–OPs. Based on this fact, we do not believe these plans can be excluded from participation, including in Exchanges that adopt selective certification approaches.

Comment: Several commenters supported flexibility for States to establish a certification timeline for QHPs, as provided in proposed § 155.1010(c). In contrast, some commenters recommended that the final rule specify a certification timeline or suggested specific times by which health plans must be certified as QHPs, such as 10 months prior to the beginning of the relevant open enrollment period.

Response: In developing the certification timeframe, an Exchange may need to consider market conditions in the State, including the potential for participation by new QHP issuers. As a result, we are not establishing a specific deadline by which an Exchange must complete certification, other than that certification must be completed prior to the open enrollment period for those QHPs that will be made available during open enrollment. We have revised the regulation text by replacing the proposal that all QHPs must be certified before the beginning of the relevant open enrollment period with a standard that all QHPs offered during an open enrollment period must be certified before the beginning of such period. We encourage Exchanges to certify QHPs before the open enrollment period to the extent possible, and to consider the needs of consumers, issuers, and other stakeholders when establishing certification timelines.

Comment: Multiple commenters requested clarification as to how Exchanges will continually monitor compliance with certification standards as described in proposed § 155.1010(d). Several commenters offered specific recommendations related to ongoing monitoring, including that HHS establish a national complaint tracking database; that QHPs demonstrate compliance rather than placing the burden of proof on Exchanges; that HHS establish penalties for non-compliance; and that Exchanges consider network adequacy and provider payment practices.

Response: The Exchange is generally responsible for monitoring ongoing QHP compliance with certification standards. There are existing and variable mechanisms for monitoring health plan performance; therefore, we believe Exchanges are best positioned to develop a process and infrastructure for monitoring QHP performance in the Exchange. This could include coordination with State departments of insurance, reviews of health plan performance, and other approaches. We note that the final rule gives Exchanges the express authority to decertify a QHP at any time for non-compliance with certification standards, including the discretion to establish sanctions for non-compliance.

Comment: Several commenters requested that the final rule clarify whether a multi-State plan may cover non-excepted abortion services if its service area includes one or more States where coverage of such services is prohibited by State law.

Response: Specific standards for multi-State plans will be described in future rulemaking published by OPM in accordance with section 1334 of the Affordable Care Act.

Comment: A few commenters requested that Exchanges be permitted to contract with other State agencies, such as the State department of insurance, to certify, recertify, and decertify QHPs for participation in the Exchange.

Response: Exchanges may enter into agreements with eligible entities in accordance with § 155.110, including other State agencies, to perform Exchange functions such as QHP certification. The Exchange is responsible for establishing processes for QHP certification, recertification,

and decertification. The Exchange may choose to carry out these functions by contracting with the State department of insurance or another appropriate entity, but must retain ultimate accountability for the certification and review of QHPs in accordance with § 155.110.

Comment: A few commenters addressed the certification processes for the individual Exchange and SHOP under proposed § 155.1010(a). While some commenters recommended that the certification process be identical for both Exchanges, others supported two distinct processes in States where the individual Exchange and SHOP are separately administered.

Response: The administrative structure of the individual Exchange and SHOP may vary by State. Further, the final rule offers significant flexibility to Exchanges in designing the certification process and does not prescribe a particular approach. Therefore, the final rule neither prescribes a single, uniform process nor two complementary processes for certification.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.1010 of the proposed rule, with the following modifications: we redesignated proposed paragraphs (c) and (d) as final paragraphs (a)(1) and (a)(2) to clarify that the certification timeline and the direction for Exchanges to monitor QHPs for ongoing compliance are considered part of the certification process. In paragraph (a)(1), we added language to increase flexibility for an Exchange to certify a QHP during the benefit year by replacing the proposal that all QHPs must be certified before the beginning of the relevant open enrollment period with a standard that all QHPs offered during an open enrollment period must be certified before the beginning of such period. We revised the language in paragraph (b) to clarify that both multi-State plans and CO–OPs must be recognized by the Exchange as certified (we have previously finalized that Exchanges must recognize CO–OP QHPs in 45 CFR 156.520(e)(1), published at 76 FR 77414).

c. QHP Issuer Rate and Benefit Information (§ 155.1020)

In § 155.1020, we proposed that Exchanges must receive a QHP issuer's justification for a rate increase prior to the implementation of such an increase, and ensure that the QHP issuer posts the justification on its Web site. Specifically, we proposed to codify the statutory direction in section 1311(e)(2) of the Affordable Care Act that an Exchange consider the following factors related to health plan rates when determining whether to certify QHPs: (1) The justification of a rate increase prior to the implementation of the increase; (2) the recommendations provided to the Exchange by the State under section 2794(b)(1)(B) of the PHS Act; and (3) any excess rate growth outside the Exchange as compared to the rate of growth inside the Exchange, including information reported by the States. We also solicited comment on how to best align section 2794 of the PHS Act and section 1311(e)(2) of the Affordable Care Act with respect to review of rates. Finally, we proposed that the Exchange must, at least annually, receive from QHP issuers information on rates, covered benefits, and cost sharing for each QHP, in a form and manner specified by HHS.

Comment: Many commenters expressed support for the standard in proposed § 155.1020(a) that an Exchange ensure that any rate increase justification is prominently posted on the QHP issuer's Web site. Several commenters requested clarification of the meaning of ''prominently'' posted or made specific recommendations that, for example, the Exchange Web site link to the justification on the issuer's Web site, that the Exchange Web site separately post the justification, or that the Exchange Web site include a pop-up ''warning'' to enrollees who select a QHP for which there was a recent rate increase.

Response: In the final rule, we have amended § 155.1020(a) to direct the Exchange to provide access to the rate increase justification posted on the issuer's Web site. We believe that this additional standard would provide greater transparency, and make it easier for consumers to access information about rate increases when considering QHPs. We note that nothing in this final rule would preclude an Exchange from separately posting an issuer's justification or otherwise informing consumers about rate increase justifications, as suggested by commenters.

Comment: A few commenters recommended that the final rule specify that the Exchange must collect rate justifications in accordance with proposed § 155.1020(a) in a timely manner.

Response: The Exchange must collect rate justifications in advance of the annual certification or recertification process, so that the Exchange can meaningfully consider the information when determining whether to make a QHP available through the Exchange. This is implicit in the operation of § 155.1010 and § 155.1020. However, recognizing that Exchanges may establish different timelines for certification and recertification within the parameters described in § 155.1010, we do not establish a separate uniform date for the collection of such justifications in the final rule.

Comment: One commenter requested that HHS clarify that any discussion of the State Insurance Commissioner or State department of insurance in the preamble to the proposed rule encompasses any relevant State regulator.

Response: While the statute gives the Exchange this authority, we believe that that the intent of § 155.1020 is that the Exchange consider recommendations from the State agency or official responsible for complying with section 2794(b) of the PHS Act.

Comment: Many commenters suggested ways Exchanges could consider rate increase justifications under proposed § 155.1020(b). Some commenters favored a rigorous rate review process that would go beyond the functions currently performed by State regulators, such as by collecting additional information from QHP issuers implementing rate increases (for example, evidence of efforts to control costs through value-based benefit designs).

In contrast, several other commenters recommended that the final rule reaffirm the traditional role of States in reviewing rates. Commenters further urged HHS to minimize the potential for duplication and inconsistency by encouraging the Exchange to leverage a State's program under section 2794 of the PHS Act to review rates. One commenter requested that the final rule clarify that an Exchange's ability to act in response to a rate increase would be limited to deciding whether to make a QHP available through the Exchange.

Response: We encourage the Exchange to leverage existing State rate review processes to the extent appropriate. As we highlighted in the preamble to the proposed rule, such coordination could include posting or adopting the same format used for rate justifications submitted to the State. However, we note that in some cases an Exchange may engage in more in-depth consideration of QHP issuers' justifications when determining whether to make a QHP available on the Exchange. As a result, we do not limit the ability of Exchanges to conduct additional reviews of rate increase justifications, although we recommend that Exchanges consider the administrative burden on issuers associated with any such reviews. We

note that an Exchange's consideration of rate increases is limited to whether a QHP should be made available on the Exchange.

Comment: In response to the provision in proposed § 155.1020(b) that an Exchange consider rate increases, many commenters requested that HHS clarify how the Exchange must incorporate such review into the QHP certification process. A few commenters recommended that excessive rate increases be considered cause for refusal of certification or decertification. Conversely, one commenter recommended that Exchanges initially not consider rate increases in the certification of QHPs, and that in later years the level or review would be proportional to the size of the rate increase. Finally, a few commenters requested that the final rule clarify how HHS will oversee Exchange review of rate increases.

Response: An Exchange may choose from a variety of approaches with respect to QHP issuer rate increases. For example, an Exchange may exercise the discretion provided in § 155.1000(c)(2) by opting to not make available QHPs implementing rate increases that the Exchange determines are not sufficiently justified. Other Exchanges may choose to rely more heavily on the process and determinations made by the applicable State regulator. Therefore, we are not prescribing a specific process or standard that the Exchange must follow in its consideration of rate increase justifications in this final rule.

Comment: One commenter requested that the final rule clarify the applicability of the provisions in this section to multi-State plans.

Response: Standards and processes related to multi-State plans will be addressed in future rulemaking by OPM in accordance with section 1334 of the Affordable Care Act. Because OPM will administer contracts with multi-State plans, we anticipate that OPM may collect certain data, including rate and benefit data, from multi-State plans. To avoid duplicate reporting and minimize administrative burden, we have amended proposed § 155.1020(b) and (c) to clarify that OPM will provide a process for rate increase consideration of multi-State plans and a process for multi-State plans to submit rate and benefit information, respectively.

Comment: Two commenters requested the meaning of the standard in proposed § 155.1020(b)(1)(iii) that an Exchange consider any excess of rate growth outside versus inside the Exchange. One commenter requested clarification of whether HHS will establish a uniform, national limit on rate increases. Another commenter requested that HHS clarify the meaning of premium price controls. One commenter recommended that the final rule discourage or prohibit the Exchanges from holding down rates and creating ''spillover'' increases outside the Exchange or in other States, for multi-State plans. Finally, one commenter recommended that the rate review function inside and outside of the Exchange be combined.

Response: As indicated in the preamble to the proposed rule, we encourage Exchanges to work closely with State departments of insurance when considering issuer rate increases. With respect to § 155.1020(b)(1)(iii), we note that an Exchange should consider the rate of growth in rates for similar products that are offered outside versus inside the Exchange, which may help the Exchange in its consideration of rate increase justifications.

The term premium price controls is not defined in section 1311(e) of the Affordable Care Act, which this provision implements. We note that review of rate information in accordance with this section is the responsibility of the Exchange; therefore, we are not defining the term ''premium price controls'' or setting a national limit in this final rule.

Comment: A few commenters requested that the final rule clarify the content and timing of reporting of the rate and benefit information described in proposed § 155.1020(c). One commenter recommended that the information be reported twice per year. Several commenters urged HHS to direct the Exchange also collect information on benefit exclusions.

Response: We intend to clarify the format and content of data submission in accordance with this section in future guidance. Because the purpose of the collected information is to support the QHP certification process, the timing is implicit in the operation of this provision in conjunction with § 155.1010(a). We note that we interpret § 155.1020(c)(1) to direct Exchanges to collect rate information for pediatric dental benefits offered in accordance with section 1302(b)(1)(J) of the Affordable Care Act, and for any benefits in excess of the other benefits offered under section 1302(b) of the Affordable Care Act. Exchanges will need to be able to identify such information to support the administration of advance payments of the premium tax credit.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.1020 of the proposed rule, with a few exceptions. In paragraph (a), we added that the Exchange must provide access to rate justification information on its Internet Web site. We also clarified throughout this section that the U.S. Office of Personnel Management will determine the process by which OPM will consider rate increases and by which multi-State plans submit rate and benefit information to the Exchange.

d. Transparency in Coverage (§ 155.1040)

In § 155.1040, we proposed how section 1311(e)(3) would be implemented: that Exchanges direct health plans seeking certification as QHPs to submit transparency information outlined in § 156.220 to the Exchange, HHS, and other entities. We also proposed to direct the Exchange to monitor the use of plain language by QHP issuers when making available QHP transparency data, consistent with guidance developed jointly by the Secretary of HHS and the Secretary of Labor. In addition, we proposed that the Exchange direct QHP issuers to make cost-sharing information available to enrollees.

Comment: With respect to proposed § 155.1040(a), several commenters recommended that Exchanges serve as data aggregators for transparency information. One commenter requested that Exchanges be permitted to contract with other entities to collect and analyze transparency data.

Response: While we believe some Exchanges may wish to aggregate transparency data across QHPs to facilitate the comparison of plans, other Exchanges may prefer not to take on this function, and others may contract with another entity to collect and analyze transparency data consistent with § 155.110. Regardless, by law, we note that the Exchange must condition certification of a QHP on its submission of such transparency data in accordance with § 156.220.

Comment: A few commenters recommended that HHS consult with consumers and other stakeholders in developing plain language guidance in accordance with proposed § 155.1040(b). Other commenters suggested specific elements to include (for example, translation services). One commenter recommended that QHP issuers be permitted to attest to the use of plain language to reduce the administrative burden on the Exchange.

Response: We note that ''plain language'' is defined in § 155.20. HHS and the Department of Labor will jointly develop and issue guidance on best practices of plain language writing, and

will inform the public about the process for developing such guidance.

Comment: Several commenters recommended that the Exchange Web site inform consumers of their ability to request cost-sharing information from QHP issuers in accordance with proposed § 155.1040(c) of this section.

Response: We will consider including sample language to this effect in the Exchange Web site template.

Comment: Multiple commenters requested that HHS clarify the oversight and enforcement process for data reporting in accordance with proposed § 155.1040(a), including by specifying any sanctions that the Exchange may impose on QHP issuers for failure to report the data. One commenter specifically recommended that QHP issuers be directed to prepare compliance reports addressing transparency data and consumer inquiries regarding cost sharing.

Response: We expect that each Exchange will develop a compliance and enforcement approach that will apply to this and other certification standards.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.1040 of the proposed rule, with the following modification: in paragraph (a) we clarified that the U.S. Office of Personnel Management will determine the process through which multi-State plans submit transparency data.

e. Accreditation Timeline (§ 155.1045)

In § 155.1045, we proposed that the Exchange establish the time period within which any QHP issuer that is not already accredited must become accredited following certification of a QHP. This provision is consistent with § 156.275, in which we proposed that all QHP issuers must be accredited with respect to their QHPs within the timeframe established by the Exchange.

Comment: We received many comments in response to our proposed standard to allow Exchanges to determine a uniform period following certification by which QHP issuers must be accredited. A number of commenters agreed with our proposal that the States should be given flexibility to determine this timeline. Several other commenters disagreed with our proposal to allow Exchanges to set the timeline for accreditation for QHPs and requested that HHS establish a Federal timeline for accreditation that all Exchanges must follow. Several commenters suggested appropriate accreditation timelines for HHS to establish. Another commenter suggested that allowing QHP certification without accreditation runs counter to the intent of the law and State autonomy in determining the accreditation timeline fails to offer adequate consumer protection.

Response: We maintain our regulation text as stated in the proposed rule. We believe that this proposal is consistent with our efforts to ensure that Exchanges have the discretion to implement QHP issuer standards that best meet the needs of their Exchange enrollees. To draw new issuers to the Exchange, we note that an Exchange may want to provide issuers with additional time beyond initial certification to become accredited. Section 1311(c)(1)(D)(ii) of the Affordable Care Act clearly provides for the Exchange to establish the timeframe.

Comment: We received a single comment to our proposed provision in § 155.1045 requesting that plans be allowed to select their own accrediting entity. We also received a comment suggesting criteria that the Secretary should use to recognize accrediting entities.

Response: We expect to engage in future rulemaking to adopt a process and criteria for the recognition of accrediting entities.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.1045 of the proposed rule with the clarification that the Office of Personnel Management will establish the accreditation period for multi-State plans as part of the certification of those plans.

f. Establishment of Exchange Network Adequacy Standards (§ 155.1050)

To ensure that Exchange network adequacy standards are appropriate for QHP issuers and reflect local patterns of care, we proposed in § 155.1050 that each Exchange ensure that enrollees of QHPs have a sufficient choice of providers. We discussed, in preamble, different measures of network adequacy and solicited comment on whether the final rule should set Federal minimum network adequacy standards or direct the Exchanges to set specific types of standards, including additional qualitative or quantitative standards. We also requested comment on an additional standard that the Exchange ensure that QHPs' provider networks provide sufficient access to care for all enrollees, including those in medically underserved areas.

Comment: A few commenters requested that HHS clarify how the network adequacy standards will be monitored and enforced. Commenters recommended that the Exchange report on oversight of network adequacy, or use specific tactics to monitor network adequacy (for example, secret shopper events, monitoring of appointment wait times).

Response: Many States direct health insurance issuers to evaluate the adequacy of their provider networks on an ongoing basis and monitor network adequacy in their traditional role of regulating health insurance. We encourage Exchanges to coordinate with State departments of insurance in monitoring QHP networks for sufficient access, and this final rule provides Exchanges with discretion to establish their own monitoring procedures to assure ongoing compliance. We anticipate that Exchanges will identify a variety of tools and strategies to monitor QHP compliance with all certification standards, including standards related to network adequacy. Accordingly, we are not prescribing specific oversight and enforcement strategies in this final rule.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.1050 of the proposed rule, except that we are revising the regulation text to clarify that an Exchange must ensure that each QHP complies with network adequacy standards established in accordance with § 156.230.We are reorganizing the regulation text for increased clarity and flow by moving the network adequacy standard to § 156.230. In addition, the regulation text is revised to clarify that the U.S. Office of Personnel Management will ensure compliance with network adequacy standards for multi-State plans as part of the certification of those plans. Finally, for reasons described in § 156.230, we clarified that a QHP issuer may not be prohibited from contracting with any essential community provider. For a complete discussion of the comments on network adequacy standards, please refer to § 156.230.

g. Service Area of a QHP (§ 155.1055)

In § 155.1055, we proposed that Exchanges have a process to establish or evaluate the service areas of QHPs to determine whether the following criteria are met: (1) the service area covers a minimum geographical area that meets certain conditions, and (2) has been established without regard to racial, ethnic, language, health status-related factors listed in section 2705(a) of the PHS Act, or other factors that exclude specific high utilizing, high cost, or medically-underserved populations.

Comment: Many commenters supported the service area standard in

proposed § 155.1055(a). However, several commenters recommended alternative standards, such as that all QHPs must serve the entire Exchange service area, the entire State, areas smaller than a county, or contiguous areas. Some commenters suggested that HHS refrain from requiring QHPs to offer coverage Statewide to ensure that local health plans may participate, while others encouraged Exchanges to align standards with market-wide standards.

Response: Under the proposed and final rule policy, Exchanges have the ability to establish or evaluate QHP service areas in such a way that would allow for participation by local health plans, provided that such standard is established without regard to the factors listed in § 155.1055(b). We recommend that Exchanges consider aligning QHP service areas with rating areas established by the State in accordance with section 2701(a)(2) of the PHS Act. To the extent QHPs operate within such uniform service areas, this policy would facilitate consumers' ability to compare premiums of QHPs, promoting competition within the Exchange market. Furthermore, aligning QHP service areas with rating areas may simplify consumer understanding and Exchange administration of eligibility determinations for premium tax credits, which may be complex if QHP service areas are highly individualized.

Comment: Several commenters expressed concern that allowing Exchanges to set unique service area standards would conflict with existing State standards that are meant to prevent against discriminatory service areas.

Response: We acknowledge that some States already have in place service area standards that protect against red-lining and other ''cherry-picking'' practices where the issuer only offers plans to geographic areas that are expected to have lower risk. We believe that § 155.1055 of this final rule provides a sufficiently broad standard such that an Exchange operating in a State with equally or more protective service area standards that prevent discrimination could use those standards for QHP issuers as well. To the extent that the broad standard here is more protective than existing State law, however, the Exchange must apply this regulatory standard to QHPs.

Comment: One commenter requested examples of the ''necessary'' or ''nondiscriminatory'' standards in proposed § 155.1055(b). Another commenter suggested that the Medicare Advantage precedent would be useful in determining whether service of part of a county would fall under necessary or non-discriminatory standards. Two commenters suggested that HHS specifically incorporate the parameters relating to a small geographic service area contained in the Medicare manual.

Response: We believe that the Medicare Advantage ''county integrity rule'' described in 42 CFR 422.2 (defining service area) is a useful resource for evaluating service areas, and we noted in the preamble to the proposed rule that the service area standard in § 155.1055 mirrors the standard established by Medicare Advantage (76 FR 41866, at 41894 (July 15, 2011)). While we believe that the standards set forth by Medicare Advantage guidance provide examples of how to apply this standard, we note that States have discretion to interpret ''necessary, non-discriminatory, and in the best interest of qualified individuals and qualified employers.'' For example, if a State has an existing service area standard that ensures service areas are not discriminatory and are in the best of the consumer, then the Exchange could decide to establish its service areas to be the same as the existing State standard. However, this provision provides authority for an Exchange to set stricter QHP standards if it observes service areas that specifically exclude certain areas.

Comment: A number of commenters requested clarification on the difference between a service area and a rating area.

Response: A rating area, as described in § 156.255(a) and section 2701(a)(2) of the PHS Act, is a geographic area established by a State that provides boundaries by which issuers can adjust premiums in accordance with section 2701(a)(1)(A)(ii) of the PHS Act. In contrast, a service area is the geographic area in which an individual must reside or be employed (in accordance with standards outlined in § 155.305 and § 155.710) in order to enroll in a given QHP. As noted previously, we recommend that Exchanges consider aligning QHP service areas with rating areas to foster competition, promote consumer understanding, and reduce administrative complexity.

Comment: One commenter recommended that HHS encourage States to establish service areas in accordance with proposed § 155.1055 as soon as possible using county or other existing area boundaries, noting that new regional boundaries will increase administrative and logistical complexity of assembling a provider network.

Response: QHP issuers will need to understand QHP standards as early as practicable, and we encourage Exchanges to be transparent and clear about standards as far in advance of QHP certification as possible. As noted above, Exchanges do not need to establish new service area boundaries if existing service areas are not discriminatory.

Comment: Several commenters voiced concern about the lack of an overarching standard that Exchanges ensure a sufficient number of health plans in all geographic areas of an Exchange.

Response: In general, we clarify that the expectation of § 155.105(b)(3) is that, to the extent possible, an Exchange must ensure that QHPs are available throughout the entire State. We encourage Exchanges to establish or negotiate service areas with QHP issuers to ensure that residents living in the Exchange service area have access to QHPs.

Comment: A few commenters suggested that the final rule specifically establish that service areas of QHPs cannot be drawn to avoid dividing Tribal communities and reservations, or former reservations, into different service areas.

Response: We note that § 155.1055(b) establishes that QHP service areas be established in a non-discriminatory manner. We encourage the Exchange to consider the impact of QHP service areas on Tribal communities when evaluating or developing service areas and to initiate Tribal consultation in connection with these issues.

Comment: A few commenters recommended the final rule add ''economic factors'' to the list of factors by which a QHP issuer cannot establish service areas in proposed § 155.1055(b). Another set of commenters were concerned that the proposed rule only prevented discriminatory service areas within counties, but not between counties.

Response: We believe that this provision adequately addresses the underlying causes of ''red-lining,'' which is to exclude populations that are high utilizing, high cost, or medically-underserved. In addition, while § 155.1055(a) addresses discriminatory service area practices within a county, § 155.1055(b) establishes that the general service area delineations must be established without regard to a variety of factors that could be used to ''cherry-pick'' healthy from unhealthy risk by geography.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.1055 of the proposed rule with a modification to strengthen the language that directs Exchanges to ensure that the service area standards are met.

h. Stand-alone Dental Plans (§ 155.1065)

In § 155.1065, we proposed that an Exchange allow limited scope stand-alone dental plans to be offered as stand-alone plans or in conjunction with a QHP, provided that the plans furnish at least the pediatric essential dental benefit described under section 1302(b)(1)(j) of the Affordable Care Act. We also proposed that the stand-alone dental plan comply with section 9832(c)(2)(A) of the Code and section 2791(c)(2)(A) of the PHS Act. We also proposed to allow an Exchange to certify a health plan as a QHP if it does not offer the pediatric essential dental benefit, provided that a stand-alone dental plan is offered through the Exchange.

We requested comment on whether some of the QHP certification standards and consumer protections, such as a network adequacy, should also apply to stand-alone dental plans as a Federal minimum and what limits Exchanges may face on placing certification standards on dental plans given that they are excepted benefits. We also invited comment on whether we should set specific operational minimum standards related to allocation of advance payments of the premium tax credit, calculating actuarial value, and ensuring the availability of pediatric dental coverage in the Exchange. Lastly, in response to comments to the RFC, we requested comment on whether we should establish that all dental benefits must be offered and priced separately from medical coverage, even when offered by the same QHP issuer.

Comment: With respect to proposed § 155.1065(b), one commenter interpreted section 1311(d)(2)(B)(ii) of the Affordable Care Act to mean that an Exchange must allow a stand-alone dental plan to offer coverage in an Exchange. The commenter requested clarification on whether the partnering of a QHP with stand-alone dental plans as their subcontractors for pediatric dental care would be consistent with this provision.

Response: We interpret the phrase regarding the offering of stand-alone dental plans ''either separately or in conjunction with a QHP'' to mean that the Exchange must allow stand-alone dental plans to be offered either independently from a QHP or as a subcontractor of a QHP issuer, but cannot limit participation of stand-alone dental products in the Exchange to only one of these options.

Comment: A number of commenters expressed concern regarding the applicability of cost-sharing limits and annual and lifetime limits to stand-alone dental plans. Commenters requested clarity on whether such limits applied, and cautioned that if stand-alone dental plans do not have to comply with the same out-of-pocket, annual, and lifetime limit standards that would apply QHPs, then there would be an unlevel playing field.

Response: We accept the recommendation of commenters that cost-sharing limits and the restrictions on annual and lifetime limits should apply to stand-alone dental plans for coverage of the pediatric dental essential health benefit. The Affordable Care Act directs any issuer that must meet the coverage standards in section 1302(a) to cover each of the ten categories; thus, any issuer covering pediatric dental services as part of the essential health benefits must do so without annual or lifetime limits as defined under the Affordable Care Act and its implementing guidance, even if such issuers are otherwise exempt from the provisions of Subparts I and II of Part A of Title XXVII of the PHS Act (including PHS Act section 2711) under PHS Act section 2722. We note that for any benefit offered by a stand-alone dental plan beyond those established under section 1302(b)(1)(J) of the Affordable Care Act, standards specific to the essential health benefits would not apply. We plan to provide more detail in the future regarding how a separately offered pediatric dental essential health benefit would be considered under standards that apply to a full set of essential health benefits.

Comment: With respect to proposed § 155.1065(b), several commenters specifically recommended that stand-alone dental plans be directed to offer a child-only pediatric dental plan. The commenters were concerned that an Exchange with only family dental coverage options and QHPs that do not have to cover the pediatric dental benefit would decrease the enrollment of children in dental coverage, as the advance payment of the premium tax credit would only be applicable to the pediatric dental essential health benefit. Others were concerned that the stand-alone dental plans would not have capacity to cover all potential enrollees which, combined with the exemption for QHPs to not offer the pediatric dental coverage when stand-alone dental plans are available, would create insufficient access to child-only options.

Response: In this final rule, § 155.1065(a)(3) would apply the standard of § 156.200(c)(2) to offer a child-only plan to stand-alone dental plans certified to be offered through the Exchange. In the new paragraph § 155.1065(d), we direct an Exchange to consider the collective capacity of stand-alone dental plans during certification to ensure sufficient access to pediatric dental coverage. By ''sufficient access,'' we mean to convey that Exchanges should ensure that, when combined, stand-alone dental plans have the capacity (in terms of solvency and provider network) to provide child-only coverage to all potential children enrolling in coverage through the Exchange.

Comment: A set of commenters addressed the request for comment in the proposed rule on whether the final rule should establish that QHPs must separately offer and price coverage for the pediatric dental essential health benefit so that consumers have the potential to enroll in dental coverage that is different from the dental benefits offered by the QHP they selected. Some suggested a standard for QHPs to separately price and offer pediatric dental coverage so consumers could make direct comparisons based on premium, cost-sharing, and benefits. Other commenters stated that it would be easier for consumers if the benefits were bundled. A number of commenters also recommended that HHS direct QHPs to offer medical-only options without pediatric dental coverage.

Response: If an Exchange determines that having QHPs separately offer and price pediatric dental coverage is in the interest of the consumer, as described in § 155.1000(c), then the Exchange may establish such standard as a condition of QHP certification. Otherwise, QHPs are not uniformly directed to separately price and offer pediatric dental coverage under this final rule.

Comment: A few commenters urged HHS to allow health plans outside of the Exchange to have the same exemption as QHPs inside the Exchange, in that health plans would not have to cover pediatric dental if a stand-alone plan existed in the market.

Response: This request is outside the scope of this final rule, which addresses explicitly the standards for QHPs. Section 1302(b)(4)(F) of the Affordable Care Act specifically addresses the exemption in terms of QHPs offered through an Exchange.

Comment: With respect to proposed § 155.1065(b), a small number of commenters requested that Exchanges ensure that stand-alone dental plans are offered as both fee-for-service plans and managed care plans.

Response: Section 1311(e)(1)(B)(i) prohibits the Exchange from excluding a plan from the Exchange because it is a fee-for-service plan.

Comment: Several commenters suggested that a way to indicate to QHPs

that they will not have to cover pediatric dental coverage would be to issue a request for proposals to stand-alone dental plans in advance of the QHP certification process.

Response: We have not set any operational standards in § 155.1065. Each Exchange has discretion in determining how to implement this provision.

Comment: With respect to proposed § 155.1065(c), many commenters voiced support for allowing an Exchange to direct issuers of stand-alone dental plans to comply with any QHP certification standards and consumer protections, with some specifying network adequacy and cost-sharing standards. Many commenters stated that certification standards are necessary to ensure a level playing field between pediatric dental coverage offered through QHPs or stand-alone products. A few commenters requested that HHS direct Exchanges to establish uniform certification and recertification standards for medical and stand-alone dental plans. A small number of commenters recommended that HHS not establish standards for stand-alone dental plans, or specified certain standards that should not apply, such as quality and accreditation. One commenter suggested that QHP issuers not have to comply with any standard that does not apply to stand-alone dental plans for the offering of pediatric dental coverage.

Response: We are persuaded by comments suggesting that stand-alone dental plans comply with QHP certification standards, as such standards will help ensure a consistent level of consumer protections as QHPs. Accordingly, we have added a new provision to § 155.1065(a)(3) establishing that stand-alone dental plans must comply with QHP certification standards, except for those certification standards that cannot be met because the stand-alone dental plans covers only pediatric dental benefits. For example, to the extent that accreditation standards specific to stand-alone dental plans do not exist, such plans would not have to meet § 155.1045. We also note that the Exchange may establish certification standards that are specific to the unique nature of stand-alone dental plans. For example, an Exchange can set a different network adequacy standard for stand-alone dental plans than for medical plans. For the purposes of this provision, any application of QHP standards to stand-alone dental plans by the Exchange would only apply to stand-alone dental plans offered through the Exchange.

Comment: A small number of commenters sought clarification on whether stand-alone vision plans could be offered through the Exchanges. Other commenters also sought clarification about the offering of other types of insurance that are not health plans, such as disability insurance.

Response: HHS is still evaluating this issue and plans to provide more details regarding the offering other coverage through an Exchange in future guidance.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.1065 of the proposed rule, with three modifications: in paragraph (a)(2), we clarify that section 2711 of the PHS Act would apply to the pediatric dental essential health benefit covered by a stand-alone dental plan. In new paragraph (a)(3), we established that stand-alone dental plans must comply with all QHP certification standards subject to certain exceptions. In new paragraph (c) we directed Exchanges to consider whether stand-alone dental plans will provide sufficient access to the pediatric dental essential health benefit during certification of stand-alone dental plans. Finally, we redesignated proposed paragraph (c) as paragraph (d).

i. Recertification of QHPs (§ 155.1075)

In § 155.1075, we proposed that the Exchange implement procedures for the recertification of health plans as QHPs that include a review of the general certification criteria outlined in § 155.1000(c). We also proposed to permit the Exchange to determine the frequency for recertifying QHPs. We invited comment on whether we should outline specific standards associated with the term length for recertification. In addition, we proposed that, after reviewing all relevant information and determining whether to recertify a QHP, the Exchange must notify a QHP issuer of its recertification status and take appropriate action. Finally, we solicited comments on the appropriateness of the proposed recertification deadline of September 15 of the applicable calendar year.

Comment: With respect to the recertification process described in proposed § 155.1075(a), many commenters provided feedback on our proposal to permit Exchanges to establish the frequency of recertification. While some commenters supported the flexibility provided in the proposed rule, others recommended that HHS establish the frequency for recertification and offered specific recommendations about the recertification interval, such as every one year, three years, or as-needed based on certain ''triggering'' events.

Response: We believe that Exchanges are best positioned to establish the frequency of or other parameters for recertification that reflect local market conditions or existing State regulatory processes. We believe varying intervals for recertification and approaches could be appropriate in some circumstances, and therefore are not establishing a uniform frequency for recertification in this final rule.

Comment: Multiple commenters recommended that specific elements be considered during the recertification process described in proposed § 155.1075(a), such as a QHP issuer's complaint history, sanctions imposed by State regulators, or interaction with tribes and/or American Indian/Alaska Native populations. Commenters also suggested that the recertification process include a review of the QHP's network and engagement with essential community providers.

Response: An Exchange must establish a recertification process that includes a review of the minimum certification criteria outlined in § 155.1000(c) of the final rule, and must monitor QHPs for ongoing compliance with certification criteria, as specified in § 155.1010(d). At its discretion, an Exchange may establish additional recertification criteria or review processes, if the Exchange believes such criteria will improve the consumer experience.

Comment: While some commenters supported the proposed recertification deadline of September 15th of the applicable calendar year as indicated in proposed § 155.1075(b), others recommended greater flexibility for States or an alternate deadline, such as August 15 of each year.

Response: Recertification should be completed, and the appropriate parties notified, in advance of the open enrollment period so that consumers, issuers, and Exchanges have sufficient time to prepare for and make decisions about the upcoming plan year. In the proposed rule, we set forth the dates for the initial and annual open enrollment periods. In this final rule, we believe it is also appropriate to establish the annual deadline for recertification. We believe that the proposed deadline of September 15th provides sufficient time for Exchanges and issuers to participate in a robust recertification process, and also ensures that consumers will be fully informed of their plan choices at the start of each open enrollment period. Therefore, we are finalizing the proposed recertification deadline of September 15th in this rule.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.1075 of the proposed rule, except that in paragraph (a) we clarified that, consistent with the revisions to § 155.1010, multi-State plans and CO–OPs are not subject to the Exchange recertification process.

j. Decertification of QHPs (§ 155.1080)

In § 155.1080, we proposed that the Exchange implement procedures for the decertification of health plans as QHPs, which we defined as the termination by the Exchange of the certification status and offering of a QHP. We also proposed that the Exchange must establish an appeals process for health plans that have been decertified. We requested comments generally on the proposed decertification process and asked specifically whether there were other appropriate authorities that could assist Exchanges in the decertification process. Finally, we proposed that if a QHP is decertified, the Exchange must provide notice of the decertification to parties who may be affected, including the QHP issuer, enrollees of the decertified QHP, HHS, and the State department of insurance.

Comment: With respect to the decertification process proposed in § 155.1080(b), some commenters supported the flexibility given to Exchanges to design the decertification process in the proposed rule, while other commenters suggested specific approaches to decertification. A few commenters requested that the final rule identify ''triggering events'' for decertification, such as a determination that a QHP's network is inadequate; others requested that HHS provide additional clarification on when decertification would be appropriate.

Response: We continue to provide Exchanges discretion in designing the decertification process and making decertification decisions. The final rule establishes that an Exchange may decertify a QHP at any time for failure to comply with the minimum certification standards described in § 155.1000(c), and any additional certification standards established by the Exchange. We believe that this flexibility is necessary to allow an Exchange to tailor its process for compliance and decertification to be appropriate for the market conditions in the State. The Exchange is responsible for establishing the decertification process, including the approach used to identify plans that are out of compliance with certification standards or the associated sanctions.

Comment: One commenter requested additional information on whether multi-State plans may be decertified through the process described in proposed § 155.1080(b).

Response: The Affordable Care Act establishes a deeming process for multi-State plans; as a result, we clarify that multi-State plans are exempt from the Exchange's recertification and decertification processes.

Comment: Several commenters requested that HHS clarify the consequences of an Exchange's failure to decertify plans that are out of compliance with certification standards as described in proposed § 155.1080(c), and recommended that Exchanges be directed to decertify non-compliant QHPs.

Response: QHPs with persistent or significant compliance issues should be decertified and removed from the Exchange; however, we recognize that Exchanges may, for example, wish to pursue intermediate sanctions for minor violations of certification standards that do not adversely impact consumers, so long as such actions are consistent with applicable law. While it is our expectation that an Exchange would decertify a QHP that is not compliant with certification standards or where the health and safety of an enrollee may be at-risk, this final rule permits Exchanges to explore a variety of oversight and enforcement strategies, up to and including decertification. We intend to address oversight of Exchanges through future implementation and rulemaking under section 1313 of the Affordable Care Act.

Comment: One commenter recommended that an Exchange be permitted to certify new plan(s) to replace decertified QHP(s) during the benefit or plan year in accordance with proposed § 155.1080(c).

Response: We believe it is important for QHPs to be certified prior to the open enrollment period to ensure all consumers have the same plan options, and are aware of those options before they make their plan selections. However, we believe that an Exchange should have the option to replace a decertified QHP with another QHP in certain cases, for example if the decertification of a QHP resulted in no or few QHP choices in some regions of an Exchange's service area. We have revised the regulation text in § 155.1010(a)(1) to provide additional flexibility for an Exchange to certify QHPs during the benefit year by replacing the proposal that all QHPs must be certified before the beginning of the relevant open enrollment period with a standard that all QHPs offered during an open enrollment period must be certified before the beginning of such period.

Comment: A few commenters requested that the final rule clarify that QHPs decertified in accordance with proposed § 155.1080(c) may retain non-Exchange membership.

Response: Decertification would not affect enrollees who purchased QHP coverage directly or not through the Exchange, because such members' enrollment occurred outside the Exchange. However, such a plan could no longer be marketed as a QHP following decertification and the population enrolled in that plan through the Exchange would be provided a special enrollment period to transfer to a different QHP in accordance with § 155.420(d) and § 155.430(b)(2)(iv). While the Exchange regulates enrollment through the Exchange, any sanctions or other actions related to a QHP's non-Exchange membership would be at the discretion of the State insurance commissioner.

Comment: A few commenters requested additional information on the appeals process described in proposed § 155.1080(d) or suggested specific parameters, such as 30 days to file and 30 days to hear an appeal.

Response: Consistent with the authority to design the decertification process, the Exchange is responsible for outlining the parameters of the appeals process, including timing, what entity will hear appeals, and other factors.

Comment: Several commenters endorsed a special enrollment period for individuals whose QHP has been decertified under proposed § 155.1080(c), and advocated that enrollees be permitted to change levels of coverage during such special enrollment period. One commenter recommended that consumers receive a special enrollment period if the QHP in which they are enrolled appeals a decertification. One commenter recommended that enrollees be given 63 days to enroll in other coverage, while another suggested that coverage by the decertified QHP continue until enrollees make new plan selections.

Response: Enrollees would have an opportunity to select a new QHP once a QHP has been decertified. Allowing enrollees to switch plans in advance of a formal determination could create unnecessary disruption in the Exchange.

Consistent with § 155.410, enrollees whose QHP is decertified would have access to a special enrollment period lasting 60 days from the date of the decertification. We believe that 60 days is a sufficient amount of time to select a new QHP. Finally, as described in the

comment and response to § 155.410, we are revising the regulation text to permit enrollees to change levels of coverage during a special enrollment period.

Comment: One commenter requested clarification on why HHS needs to receive information on decertified QHPs, as in proposed § 155.1080(e)(3).

Response: HHS needs access to information on decertification of QHPs for a number of policy and operational reasons. For example, HHS will need to administer a termination of advance payments of the premium tax credit and payment of cost-sharing reductions to issuers of decertified QHPs.

Comment: Several commenters proposed standards for notices related to decertification and non-renewal identified in proposed § 155.1080(e), such as that the notices be available in multiple languages, identify appropriate consumer resources, or include information targeted to specific populations such as American Indians and Alaska Natives. Alternatively, a few commenters recommended that HHS publish model notices. Finally, one commenter recommended that the final rule direct Exchanges and QHP issuers to confirm receipt of notices related to decertification and non-renewal.

Response: Under this final rule, all notices to consumers issued by the Exchange must conform to the minimum standards outlined in § 155.230, while notices issued by a QHP issuer must conform to standards established by § 156.250. These include protections for individuals with limited English proficiency or disabilities, and establish that all notices be written in plain language. Further, to the extent that State law or Exchange policies provide for greater accessibility or additional content, an Exchange may provide notices that exceed the minimum standards in this final rule.

We believe that establishing a standard that Exchanges and QHP issuers confirm that each notice of decertification or non-renewal has been received by the appropriate enrollee would place a significant burden on Exchanges and issuers and could demand resources that are better used for other customer service functions. Further, we believe it is consistent with the current practices of many other programs to rely upon the contact information provided by each enrollee without confirming that each mailing has been successfully received.

Comment: One commenter requested that HHS clarify that in the case of a SHOP, each enrollee, and not each employer, must receive a notice of decertification or non-renewal described in proposed § 155.1080(e), as appropriate.

Response: For purposes of SHOP, each enrollee must receive a notice of decertification or non-renewal. We note that § 156.285(d)(1)(ii) directs QHP issuers offering QHPs through a SHOP to provide notices to both enrollees and qualified employers.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 155.1080 of the proposed rule, except that in paragraph (b) we clarified that, consistent with the revisions to § 155.1010, multi-State plans and CO–OPs are not subject to the Exchange decertification process.

B. Part 156—Health Insurance Issuer Standards under the Affordable Care Act, Including Standards Related to Exchanges

Part 156 contains the proposed standards for QHPs and QHP issuers that are intended to promote robust and meaningful consumer choice.

1. Subpart A—General Provisions

a. Basis and Scope (§ 156.10)

Proposed § 156.10 of subpart A specified the general statutory authority for the ensuing regulation and noted that the scope of part 156 is to establish standards for health plans and health insurance issuers related to the benefit design standards and in regard to offering QHPs through an Exchange. We did not receive specific comments on this section and are finalizing the provisions as proposed.

b. Definitions (§ 156.20)

Most of the terms that we proposed to define in this section refer to terms proposed in § 155.20. Beyond these terms, we proposed that the term ''benefit design standards'' mean the ''essential health benefits package'' defined in section 1302(a) of the Affordable Care Act. We did not receive comments on this section that were not addressed elsewhere, and are finalizing the definitions as proposed.

c. Financial Support (§ 156.50)

In § 156.50, we proposed that participating issuers pay user fees to support ongoing operations of an Exchange, if a State chooses to impose such fees. We proposed to define the term ''participating issuer'' to mean an issuer offering plans that participate in the specific function that is funded by the user fee. We further proposed that participating issuers pay any fees assessed by a State-based Exchange, consistent with Exchange authority outlined in § 155.160.

Comment: Several commenters on proposed § 156.50 recommended that HHS modify the definition of ''participating issuer'' by simplifying and broadening the proposed definition. Specifically, two commenters requested that HHS clarify whether the proposed definition would mean that Exchanges would charge user fees in proportion to an issuer's participation in specific Exchange functions.

Response: The definition proposed in § 156.50 is structured to accommodate the variety of functions that an Exchange could perform. We note that the proposed definition does not direct an Exchange to pro-rate or otherwise tailor user fees to the specific functions in which an issuer participates. Rather, an Exchange could, but is not directed to, charge uniform user fees to all participating issuers. We note that the Affordable Care Act suggests user fees charged to participating issuers as a means for States to ensure that an Exchange is self-sustaining. We track that statutory language in this final rule when using the term participating issuer.

Comment: A few commenters recommended that § 156.50(b) of the final rule clarify that participating issuers must pay all assessments established by an Exchange, whether structured as user fees or otherwise.

Response: We believe that participating issuers are responsible for paying any assessments established by an Exchange irrespective of how such assessments are structured. Therefore, we are revising the regulation text in § 156.50 of this final rule to reflect this clarification.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 156.50 of the proposed rule, with the following modifications: in paragraph (b), we clarified that a participating issuer must remit user fees to a State-based or a Federally-facilitated Exchange. We further clarified in paragraph (b) that a QHP issuer must remit any fees charged by the Exchange in accordance with § 155.160, whether structured as user fees or otherwise.

2. Subpart C—Qualified Health Plan Minimum Certification Standards

Section 1311(c)(1) of the Affordable Care Act authorizes the Secretary, by regulation, to establish criteria for the certification of health plans as QHPs; we implement that authority in this subpart. The proposed rule clarified that, unless otherwise noted, the standards for QHPs proposed in this subpart do not supersede existing State

laws or regulations applicable to the health insurance market generally, apply specifically to the certification of QHPs for participation in the Exchange, and do not exempt health insurance issuers from any generally applicable State laws or regulations.

a. QHP Issuer Participation Standards (§ 156.200)

In § 156.200, we outline the proposed standards on QHP issuers as a condition of participation in the Exchange. These include: (1) Complying with the standards in this subpart; (2) complying with the proposals established in accordance with subpart K of part 155, and in the small group market, § 156.705; (3) ensuring that each QHP complies with the benefit design standards defined in § 156.20; (4) being licensed and in good standing to offer health insurance in the State; (5) implementing and reporting on quality improvement strategies consistent with section 1311(g) of the Affordable Care Act; (6) paying applicable user fees; and (7) complying with standards related to risk adjustment under part 153. We noted that States may choose to establish additional conditions for participation beyond the minimum standards established by the Secretary. We also proposed that to participate in an Exchange, a health insurance issuer must have in effect a certification issued or recognized by the Exchange to demonstrate that each health plan it offers in the Exchange is a QHP and that the issuer meets all applicable standards.

We also outlined the set of proposed standards with which a QHP issuer must comply related to the offering of a QHP, and specified that the QHP issuer must comply with the standards set forth in this subpart on an ongoing basis. The offering standards included: (1) Offering at least one QHP in the silver and gold coverage level; (2) offering a child-only plan at the same level of coverage; and (3) offering the QHP at the same premium rate when the QHP is offered directly by the issuer or through an agent or broker (implemented through § 156.255(b)). Finally, we proposed that a QHP issuer not discriminate on the basis of race, color, national origin, disability, age, sex, gender identity or sexual orientation.

Comment: Several commenters requested that HHS clarify the standard that a QHP issuer be in ''good standing'' to offer health insurance in proposed § 156.200(b)(4). While many commenters supported the proposed provision as written, a few suggested that HHS strengthen the standard. Conversely, one commenter recommended that ''in good standing'' be defined to exclude minor violations. One commenter recommended that QHP issuers be held accountable for demonstrating good standing, such as by providing an attestation from the relevant State regulator.

Response: As described in the preamble to the proposed rule, we interpret ''good standing'' to mean that an issuer faces no outstanding sanctions imposed by a State's department of insurance. Therefore, the specific violations or infractions that would jeopardize standing may vary by State. With respect to determining licensure and standing, Exchanges may wish to use a number of means, such as attestation or verifying the information directly with State departments of insurance. Accordingly, we do not prescribe a specific process in this final rule, but instead allow Exchanges discretion in determining the best way to substantiate licensure and standing.

Comment: Several commenters requested that HHS harmonize quality reporting standards in proposed § 156.200(b)(5) with other public programs, suggested quality measures HHS could consider to evaluate QHPs, and made specific recommendations regarding both the quality improvement strategy and quality rating system. Commenters also requested that national quality standards be utilized and quality used as a factor in QHP certification decisions. Other commenters requested that quality information be publicly reported to consumers to inform QHP selection.

Response: We will provide additional detail on the content and manner of quality reporting under this section in future guidance.

Comment: In response to proposed § 156.200(c)(1), one commenter recommended that plans be permitted to achieve the bronze level of coverage over time, while participating in an Exchange as a QHP.

Response: Section 1301(a)(1)(B) of the Affordable Care Act directs a QHP to provide the essential health benefits package, which includes compliance with the level of coverage standards outlined in section 1302; therefore, a health plan that does not meet the bronze level of coverage cannot be certified as a QHP and made available through the Exchange. HHS will issue future rulemaking on section 1302, but the Affordable Care Act does not provide for a transitional process to achieving the coverage levels.

Comment: Many commenters offered feedback on the standard for QHP issuers to offer a corresponding child-only plan for any QHP offered through the Exchange, described in proposed § 156.200(c)(2). Several commenters recommended that HHS permit individuals up to age 26 to enroll in child-only coverage; two commenters recommended that instead of offering a separate child-only plan, QHP issuers be directed or permitted to accept enrollees of any age into a QHP offered to single qualified applicants.

Response: Section 1302(f) of the Affordable Care Act directs a QHP issuer that offers a non-catastrophic plan on the Exchange to offer an identical child-only plan. We clarify that a QHP issuer could satisfy this standard by offering a single QHP to qualified applicants seeking child-only coverage, as long as the QHP includes rating for child-only coverage in accordance with applicable premium rating rules. Section 1302(f) further specifies that for purposes of this standard, a child-only plan is available to individuals under age 21 at the beginning of the benefit year. We lack the authority to alter the age limitation for enrollment into a child-only plan.

Comment: In response to this section, a few commenters requested that HHS confirm whether a QHP may contract with providers that serve specific populations, such as tribal health care providers, without violating the anti-discrimination provisions in proposed § 156.200(e).

Response: The anti-discrimination provisions included in § 156.200(e) are intended to protect enrollees and potential enrollees from discriminatory practices on the basis of race, color, national origin, disability, age, sex, gender identity, or sexual orientation. A QHP issuer may contract with health care providers that are authorized or directed by law to serve specific populations, such as Indian health providers, without violating these provisions. We note that a QHP issuer must meet all standards related to network adequacy and essential community providers specified in § 156.230 and § 156.235, respectively.

Comment: With respect to proposed § 156.200 in general, several commenters recommended that certain issuers, such as Medicaid managed care organizations, church plans and union plans, be permitted to offer certified QHPs on a limited-issue basis.

Response: As established in section 1301(a) of the Affordable Care Act, all QHPs must be offered by licensed health insurance issuers that are subject to the guaranteed issue provisions, effective January 1, 2014. Under section 2702 of the PHS Act, these issuers must issue coverage to any individual who applies

for coverage in a particular health plan. Though the statute allows issuers to stop accepting new enrollees to preserve financial solvency or due to provider network capacity under section 2702(c) and (d), respectively, the issuer must close off enrollment, or begin accepting new enrollees again, uniformly rather than selectively. We note that HHS will address the authority under 2702 under separate rulemaking.

We recognize the potential for significant movement of individuals between the Exchanges and Medicaid, as well as the potential for members of a family to be covered separately under the Exchange, Medicaid, and CHIP. We recognize that QHPs offered by Medicaid managed care organizations (MMCOs) may be able to play an important role in keeping family members covered under a common issuer and in the same provider network, promoting continuity of coverage, and mitigating the potential negative effects of ''churning'' between Medicaid and the Exchanges. HHS may provide additional guidance on this topic in the future. Additionally, we intend to address commenters' concerns surround multi-employer plans in future guidance.

Comment: A few commenters recommended that each Exchange include at least one QHP that is also a Medicaid MCO to minimize enrollee churn. A handful of commenters recommended that the Exchange be directed to deem Medicaid MCOs and other safety net health plans as QHPs. Similarly, one commenter recommended that safety net health plans be permitted to achieve licensure gradually while participating in the Exchange.

Response: Medicaid MCOs must meet the same standards as other plans to become QHPs. However, we note that Exchanges have discretion to develop specific certification criteria in a manner that might facilitate participation by Medicaid MCOs, including the establishment of the accreditation timeline as specified in § 155.1045 and the setting of QHP service areas in § 155.1055. We also note that there may be opportunities to leverage the Exchange Web site in a manner that would allow the Exchange to identify issuers that participate in both the Exchange and Medicaid managed care.

Comment: A few commenters requested that HHS clarify States' ability to develop additional certification and participation standards for QHPs.

Response: We clarify that nothing in this section precludes an Exchange from establishing additional certification criteria or issuer participation standards beyond those specified in the final rule if in the interest of qualified individuals and qualified employers served by the Exchange, per final § 155.1000(c) and the preamble discussion for that section in this final rule.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 156.200 with the following modification: we have removed proposed paragraph (c)(3) related to offering a QHP at the same premium rate inside and outside of the Exchange to avoid duplication of § 156.255(b).

b. QHP Rate and Benefit Information (§ 156.210)

In § 156.210, we proposed that a QHP's rates must be applicable for an entire benefit year or, for the SHOP, plan year. We also proposed that QHP issuers submit rate and benefit information to the Exchange and that a QHP issuer submit a justification for a rate increase prior to the implementation of such increase for purposes described more fully in § 155.1020. Additionally, we proposed that QHP issuers post rate increase justifications on their Web sites so they can be viewed by consumers, enrollees, and prospective enrollees.

Comment: Several commenters supported the provision in proposed § 156.210(a) that QHP issuers set rates for an entire benefit or plan year. Conversely, some commenters recommended an exception for plans participating in the SHOP, or to accommodate Federal or State regulatory changes.

Response: All QHPs, including those participating in the SHOP, must offer a set rate for an entire benefit or plan year. We note that while QHP issuers in SHOP may establish new rates quarterly or annually, issuers must charge the same contract rate for a plan year. We note that most Federal and State regulatory changes are proposed well in advance of becoming effective, so the number of regulatory changes that would take effect in the middle of a benefit or plan year will be limited. Therefore, no exceptions are provided in the final rule.

Comment: One commenter recommended that QHP issuers notify enrollees in advance of any rate increase.

Response: The final rule strengthens the transparency standards regarding rate increases. In § 155.1020, QHP issuers must submit to the Exchange a justification for a rate increase prior to the implementation of the rate increase. Potential and current enrollees will be able to compare QHPs and rates through the Exchange Web site. Accordingly, we are not adding an additional notice obligation to this section.

Comment: Several commenters offered feedback on the scope of the standard to post rate increase justifications in proposed § 156.210(c). While some commenters recommended posting of all rate increases, others recommended that posting be limited to rate increases determined unreasonable by a State's program for the review of rates under section 2794 of the PHS Act.

Response: The Affordable Care Act, at section 1311(e), demands the posting of all rate increase justifications submitted by a QHP issuer. Therefore, § 156.210(c) establishes that all rate increase justifications must be posted, irrespective of whether the increase is subject to review by a State's program under section 2794 of the PHS Act to determine if it is an unreasonable increase or the determination of such review. We continue to encourage Exchanges to leverage existing State processes, including a State's program under section 2794 of the PHS Act, to minimize the potential burden on QHP issuers associated with this section.

Comment: In response to the provision in proposed § 156.210(c) that QHP issuers submit and post rate increase justifications, a few commenters recommended that HHS clarify that such justifications must be written in plain language and must not be deceptive.

Response: We encourage Exchanges to use the rate increase justifications submitted as part of the State's program under section 2794 of the PHS Act, because the format for these justifications were developed with input from the National Association of Insurance Commissioners and incorporates consumer-friendly language.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 156.210 of the proposed rule without modification.

c. Transparency in Coverage (§ 156.220)

In § 156.220, we proposed a transparency standard as a condition for certification of QHPs in accordance with section 1311(e)(3) of the Affordable Care Act. The proposed rule listed specific data elements that issuers must provide, from the Affordable Care Act: (1) Claims payment policies and practices; (2) periodic financial disclosures; (3) data on enrollment; (4) data on disenrollment; (5) data on the number of claims that are denied; (6) data on rating

practices; (7) information on cost sharing and payments with respect to any out-of-network coverage; and (8) information on enrollment rights under title I of the Affordable Care Act. We sought comment on whether QHP issuers should be directed to submit this information to the Exchange and other entities, or to make such information available to the Exchange and other entities. We also proposed that QHP issuers provide the specified information in plain language. Finally, we proposed that QHP issuers make available to the enrollee information on cost-sharing responsibilities for a specific service by a participating provider under that enrollee's particular plan.

Comment: Many groups commented on the data elements included in § 156.220(a) of the proposed rule. Several commenters supported the proposed rule as written, with one commenter recommending that HHS maintain the list as proposed without additional elements. However, other commenters, suggested specific enhancements or clarifications to the proposed approach or requested that HHS establish uniform standards and methodologies. A few commenters recommended that HHS include reporting of additional data elements, such as information about condition-based exclusions. Some commenters requested that HHS provide sample forms, define key terms, or outline a specific reporting format (for example, a summary statement accompanied by data tables).

Other commenters recommended elements or approaches to transparency reporting, such as segmenting data by enrollee demographics, collecting information at the issuer level, or reporting at the product level. A few commenters provided recommendations on where transparency information should be submitted and where the information should be made available. One commenter encouraged HHS to apply the same standards to all plan types, including catastrophic plans. Several commenters recommended that HHS collect transparency data annually. Finally, one commenter stated that these standards should be extended to Medicaid and CHIP populations.

Response: We believe that QHP issuers should submit transparency information in a manner and timeframe that maximizes the utility of such information to the Exchange, HHS, and individuals. HHS intends that the reporting obligations established in this section and § 155.1040 will be aligned with the transparency reporting standards under section 2715A of the PHS Act. HHS, together with the Departments of Labor and the Treasury, will coordinate guidance on the transparency in coverage standards. As a result, we are not describing specific data formats, definitions, or frequency of reporting with respect to § 155.1040 in this final rule. We note that data reporting for Medicaid and CHIP plans is outside the scope of this final rule.

Comment: Several commenters agreed with the plain language provision in proposed § 156.220(c) as written. In addition, several commenters requested that HHS clarify how it will enforce plain language standards, with some expressing concern about the Exchange or HHS being able to check the accuracy of the plain language information submitted by QHP issuers. The commenters recommended that HHS direct QHP issuers to provide data with plain language information.

Response: We note that each Exchange will be responsible for ensuring QHP issuer compliance with this standard. HHS and the Department of Labor will jointly develop and issue guidance on best practices of plain language writing, which will assist Exchanges in determining whether issuers are using plain language, as defined in § 155.20.

Comment: We received a number of comments supporting the cost-sharing transparency in proposed § 156.220(d). Several commenters recommended that the provision be amended to allow the consumer to be able to request information by phone, fax, email, or online. One commenter requested that HHS clarify whether the obligation to provide enrollee cost-sharing information is prospective or retrospective in nature. Several commenters recommended that HHS establish that the cost-sharing information be provided free of charge by QHP issuers to the enrollees.

Response: As noted previously, HHS will coordinate with the Departments of Labor and Treasury on guidance for the transparency in coverage standards.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 156.220 of the proposed rule without modification.

d. Marketing and Benefit Design of QHPs (§ 156.225)

To preserve a level playing field within and outside of the Exchange and to leverage existing State activities, we proposed in § 156.225 that QHP issuers must to comply with any applicable State laws and regulations regarding marketing by health insurance issuers as a certification standard, as established by section 1311(c)(1)(A) of the Affordable Care Act. We also proposed to prohibit QHP issuers from employing marketing practices that have the effect of discouraging enrollment of individuals with significant health needs and sought comment on the best means for an Exchange to monitor QHP issuers' marketing practices to determine whether such activities are taking place. Additionally, we invited comment on a broad prohibition against unfair or deceptive marketing practices by all QHP issuers and their officials, agents, and representatives, and on whether HHS should establish a standard that QHP issuers not misrepresent the benefits, advantages, conditions, exclusions, limitations or terms of a QHP.

Comment: Many commenters offered feedback on whether the final rule should include a broad prohibition against deceptive marketing practices. A number of commenters supported such a prohibition and suggested specific Federal standards that HHS could adopt, such as Medicare Advantage, Medicare Prescription Drug Program, or Medicaid standards. Conversely, many commenters supported State flexibility with respect to marketing rules and oversight. A few commenters expressed concern that a Federal standard could be overly restrictive.

Response: States have significant experience with, and existing infrastructure to support, monitoring and oversight of health plan marketing activities. The National Association of Insurance Commissioners (NAIC) has provided guidance to the States in the form of the Model Unfair Trade Practices Act. The Model Act has been adopted by 45 States and the District of Columbia. The NAIC has also issued an Advertisements of Accident and Sickness Insurance Model Regulation, which has been adopted by 42 States. Both the Model Act and Model Regulation are extensive and position States to address misleading or deceptive practices. As a result, we are finalizing the marketing standards with the flexibility afforded in the proposed rule.

Comment: Many commenters offered standards or clarifications for inclusion in proposed § 156.225(b), such as a list of discriminatory versus acceptable marketing practices; a prohibition on inducements and other tactics prone to abuse; secret shopper events; focus group testing of marketing materials; and standardized compensation for agents and brokers in the Exchange.

Response: We note that the above tactics could be appropriately included in an Exchange's monitoring and

oversight activities, as well as its marketing rules. While we are not establishing that an Exchange implement specific standards for the reasons described in the preceding response, we encourage Exchanges to consider a variety of standards, tools, and strategies to promote transparent and consumer-oriented conduct in the Exchange.

Comment: Many commenters urged HHS to codify the statutory prohibition against benefit designs that have the effect of discouraging enrollment of higher-need consumers in § 156.225(b) of the final rule.

Response: We note that section 1311(c)(1)(A) specifically prohibits QHP issuers from utilizing benefit designs that have the effect of discouraging enrollment by higher-need individuals. We have modified § 156.225(b) in this final rule to codify the statutory prohibition.

Comment: A few commenters recommended that the Exchange be permitted to decertify QHPs based on improper marketing practices.

Response: Section 155.1080 of the final rule gives the Exchange the authority to decertify a QHP at any time for failure to comply with certification standards, including standards related to marketing practices.

Comment: Several commenters recommended that HHS repeat the anti-discrimination standards established in § 156.200(e) in this section.

Response: We believe that the broad prohibition on discrimination in § 156.200(e) clearly bars discrimination in marketing practices as well as other operations of the QHP issuer, and that repeating this language in § 156.225 is unnecessary.

Comment: Several commenters encouraged HHS to establish a level playing field with respect to marketing inside and outside of the Exchange. Specifically, a few commenters recommended that the final rule clarify that QHP issuers must comply with all State laws and regulations that govern marketing other health insurance products, such as statutes prohibiting unfair or deceptive acts or practices.

Response: We note that adopting the proposed rule's approach would ensure QHPs conform to any standards, laws, or regulations that govern the marketing of non-QHP health insurance products in a State.

Comment: Several commenters recommended that HHS direct Exchanges to report on oversight activities related to marketing. A few commenters additionally recommended that an Exchange Blueprint detail the Exchange's proposed approach to marketing oversight.

Response: Exchanges are responsible for ensuring compliance with the marketing standards of this section. States have significant experience in regulating marketing of health insurance issuers, and Exchanges may leverage the current monitoring practices of States with respect to marketing of health insurance. As a result, we are not imposing an additional reporting obligation for Exchanges in this area.

Comment: In response to the concern expressed in the proposed rule preamble that certain groups (for example, Medicare beneficiaries) may be vulnerable to deceptive marketing tactics, one commenter suggested that the Exchange electronically verify whether QHP enrollees are also enrolled in other coverage.

Response: We encourage Exchanges to develop a variety of strategies to identify improper marketing practices. We note that subpart D of this final rule provides for electronic verification of some types of other coverage in § 155.320(b).

Comment: A handful of commenters recommended that HHS establish a mechanism to receive consumer complaints related to marketing practices.

Response: Consumers who encounter marketing practices that they believe are deceptive or improper should be able to report such practices to the Exchange or State regulator, as appropriate. Because the Exchange is responsible for monitoring marketing of QHPs and taking any appropriate action, we believe that establishing a separate Federal complaint reporting mechanism is unnecessary.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 156.225 of the proposed rule, with the following modifications: in paragraph (b) we codified statutory language prohibiting QHP issuers from employing benefits designs that could discourage enrollment of individuals with significant health needs. Accordingly, we added ''and Benefit Design'' to the title of this section.

e. Network Adequacy Standards (§ 156.230)

In § 156.230, we proposed the minimum criteria for network adequacy in order for health plans to be certified as QHPs. We proposed that QHP issuers meet network adequacy standards established by the Exchange in accordance with § 155.1050 and consistent with the provisions of section 2702(c) of the PHS Act as amended by the Affordable Care Act. In the proposed rule, the network adequacy standard, stated in proposed § 155.1050, established ''sufficient choice of providers'' as the touchstone of whether a provider network is adequate. The preamble discussion identified several different measures of network adequacy and sought comment on whether to include additional qualitative and quantitative standards to measure network adequacy.

We proposed that a QHP issuer make its health plan provider directory available to the Exchange electronically and to potential enrollees and current enrollees in hard copy upon request, and that the directory identify providers who are no longer accepting new patients. We sought comment on standards we might set to ensure that QHP issuers maintain up-to-date provider directories. We refer commenters to the summary of proposed § 155.1050 in this final rule and to the preamble to the proposed rule for additional discussion of the proposed policy.

Comment: Many commenters offered feedback on the network adequacy standard, initially included in proposed § 155.1050. Some commenters supported the flexibility provided to States in the proposed rule, noting that such flexibility could facilitate the alignment of markets inside and outside of the Exchange. Conversely, many commenters recommended that HHS establish a national, uniform standard for network adequacy. These commenters offered numerous standards HHS could adopt, including the NAIC Managed Care plan Network Adequacy Model Act, or the current standards for Medicare Advantage plans, Medicaid managed care plans, or TRICARE plans. Finally, a few commenters generally requested that HHS clarify the meaning of ''sufficient number'' of providers.

Response: A number of competing policy goals and considerations come into play with examinations of network adequacy: that QHPs must provide sufficient access to providers; that Exchanges should have discretion in how to ensure sufficient access; that a minimum standard in this regulation would provide consistent consumer protections nationwide; that network adequacy standards should reflect local geography, demographics, patterns of care, and market conditions; and that a standard in regulation could misalign standards inside and outside of the Exchange. In balancing these considerations, we have modified § 156.230(a)(2) in this final rule to better align with the language used in the NAIC Model Act. Specifically, the final

rule establishes a minimum standard that a QHP's provider network must maintain a network of a sufficient number and type of providers, including providers that specialize in mental health and substance abuse, to assure that all services will be available without unreasonable delay. We believe this modification provides additional protection for consumers by communicating our expectations with respect to the number and variety of providers that should be present in a QHP's provider network. Further, the modified standard establishes a baseline (''all services * * * without unreasonable delay'') against which network adequacy can be measured. We note that nothing in the final rule limits an Exchange's ability to establish more rigorous standards for network adequacy. We also believe that this minimum standard allows sufficient discretion to Exchanges to structure network adequacy standards that are consistent with standards applied to plans outside the Exchange and are relevant to local conditions. Finally, placing the responsibility for compliance on QHP issuers, rather than directing the Exchange to develop standards, is more consistent with current State practice.

Comment: Several commenters urged HHS to codify the potential additional standards listed in the preamble to the proposed rule (access without unreasonable delay, reasonable proximity of providers to enrollees' homes or workplaces, ongoing monitoring process, and out-of-network care at no additional cost when in-network care is unavailable), with the largest number of commenters expressing support for the provision of out-of-network care at no additional cost when in-network care is unavailable. Other commenters recommended specific alternatives to these elements, such as a ''60 minutes or 60 miles'' or ''15–20 minutes'' standard.

Response: Based on comments, we have modified § 156.230(a)(2) in this final rule to codify the standard that services must be available without unreasonable delay. With respect to the other specific suggestions offered by commenters, we are concerned that the proposed standards may not be compatible with existing State regulation and oversight in this area. We believe that the modification to final § 156.230(a)(2) strikes the appropriate balance between assuring access for consumers and recognizing the historical flexibility and responsibility given to States in this area.

Comment: Several commenters recommended that the final rule strengthen access protections in medically underserved, rural, or professional shortage areas, and for vulnerable populations, such as limited English proficient individuals or individuals with disabilities. With respect to medically underserved areas, some commenters suggested approaches that HHS could take, such as supporting higher payment rates in these areas. Others advocated for State flexibility to develop local solutions. One commenter requested that the final rule clarify that a QHP's network cannot be deemed inadequate in a professional shortage area.

Response: We did not accept comments recommending specific, national standards given that network adequacy is typically—and diversely—regulated by States. As described above, we amended § 156.230(a)(2) in this final rule to clarify that the provider networks maintained by QHP issuers must offer access to all services without unreasonable delay. We believe that this modified standard enhances protections for all Exchange consumers, including vulnerable populations, while preserving flexibility for States to develop local solutions to ensure access. Furthermore, we believe that the standards for inclusion of essential community providers in QHP provider networks in proposed § 156.235 will also help to strengthen access in medically-underserved areas and for vulnerable populations.

Comment: Many commenters recommended that the network adequacy provisions include specific provider types, such as pediatricians, tribal health care providers, mental health professionals, teaching hospitals, or women's health care providers.

Response: While QHP networks should provide access to a range of health care providers, we are concerned that mandating inclusion of a list of specified provider types would detract from the larger issue of broadly ensuring access to the full range of covered services (*that is,* essential health benefits). Accordingly, we have modified § 156.230(a)(2) of this final rule to require QHP issuers to maintain networks that include sufficient numbers and types of providers, including providers that specialize in mental health and substance abuse, to ensure access to all services. We specifically highlight mental health and substance abuse services because we recognize that the essential health benefits will create new demands for access to mental health and substance abuse services, and that such services have traditionally been difficult to access in low-income and medically underserved communities. By highlighting mental health and substance abuse providers in the network adequacy standard, we seek to encourage QHP issuers to provide sufficient access to a broad range of mental health and substance abuse services, particularly in low-income and underserved communities. In addition, we are clarifying in § 155.1050 of this final rule that, because inclusion of essential community providers is related to network adequacy, a QHP issuer may not be prohibited from contracting with any essential community provider described in final § 156.235(c). We urge States to consider local demographics, among other elements, when developing network adequacy standards and note that nothing in the final rule would preclude an Exchange from identifying specific provider types that are particularly essential in a State.

Comment: A few commenters recommended that the final rule direct QHP networks to maintain growth capacity, or the ability to accept additional enrollees or utilization.

Response: We believe that the higher standard in § 156.230(a)(2) of this final rule helps address the commenters' concerns. Further, we believe that the reference to section 2702(c)(2) of the PHS Act, included in section 1311(c)(1) of the Affordable Care Act, implies Congressional intent to protect current enrollees from unreasonable delays in access to care if QHPs expand enrollment too quickly. Therefore, we are not prescribing a uniform growth capacity standard for all Exchanges in the final rule, though we note that an individual Exchange would be able to set such a standard.

Comment: A few commenters supported the language in the preamble to the proposed rule encouraging Exchanges and QHP issuers to consider broadly defining the providers that can furnish primary care services. However, other commenters raised concerns about this broader definition and noted that other programs, such as Medicare and Medicaid, identify a limited set of providers who may be considered primary care providers.

Response: We continue to encourage Exchanges to consider a broader definition of the types of providers who may furnish primary care services, because this should improve access to such services for consumers, particularly those in medically underserved or rural areas. We also recognize that the definition of a ''primary care provider'' should be consistent across health insurance programs to the extent possible, and we

encourage Exchanges to be mindful of existing definitions and approaches in other health insurance programs when outlining corresponding standards for QHP issuers participating in the Exchange. All provider contracts executed by QHP issuers participating in the Exchange must be fully compliant with State scope of practice laws.

Comment: A few commenters requested that HHS provide technical assistance on the various network adequacy benchmarks that are available (for example, NAIC, Medicare Advantage, TRICARE, Medicaid managed care) as States develop Exchange standards.

Response: We continue to work with States on a variety of issues related to Exchange establishment and operations, and will consider providing more specific technical assistance on existing network adequacy standards in the future.

Comment: Several commenters recommended that additional items be included in QHP provider directories described under proposed § 156.230(b), such as each provider's specialty, affiliation, licensure, or languages spoken. A few commenters requested that HHS establish that the provider directory must be easily searchable for Indian Health Service/Tribal/Urban (I/T/U) providers. Finally, a few commenters recommended that provider directories include non-physician providers.

Response: Consistent with current industry practice, we expect QHP issuers' provider directories to include information on each provider's licensure or credentials, specialty, and contact information, which could include any institutional affiliation. The Exchange may establish additional data elements that QHP issuers must include, such as identifying Indian Health Service/Tribal/Urban (I/T/U) providers.

We note that while a provider directory could include appropriate non-physician providers, we afford Exchanges discretion regarding their inclusion in the provider directory. A provider directory that includes providers whose scope of practice is limited should generally identify the services that the provider is contracted to perform, for example, by displaying such providers only when consumers search for certain services (for example, primary care).

Comment: Multiple commenters recommended that the Exchange consolidate QHP provider directories as described in the preamble to the proposed rule. Conversely, some commenters recommended maximum flexibility for QHP issuers to submit provider information.

Response: We encourage, but do not direct, Exchanges to consolidate QHP provider directories to make it easier for consumers to locate the QHPs in which their providers participate. Exchanges may also want to establish links to the provider directory on a QHP issuer's Web site.

Comment: Several commenters requested that HHS clarify how frequently QHP issuers must update provider directories under proposed § 156.230(b). Recommendations offered by commenters ranged from in real time to annually. A few commenters raised concerns about the proposed standard that directories identify providers who are not accepting new patients, noting that this could result in continuous updates.

Response: We afford each Exchange with discretion to provide guidance to QHP issuers with respect to the updating of provider directories, including how frequently issuers must identify providers who are no longer accepting new patients. We urge Exchanges to consider the appropriate balance between supporting consumer choice and the burden on QHP issuers associated with this standard (which should be lower for electronic directories than for hard copy directories). Further, in establishing such standards, we expect Exchanges to consider the information needs of current versus potential enrollees.

Comment: A few commenters recommended that HHS establish that provider directories developed in accordance with proposed § 156.230(b) must offer meaningful access to individuals with limited English proficiency and/or disabilities, for example by making directories available by phone.

Response: We note that, because they are made available to enrollees, provider directories must meet the standards for applications, forms, and notices established in § 155.230 of this final rule, which include accommodations for individuals with limited English proficiency and/or disabilities.

Comment: A few commenters suggested that QHP issuers be directed to notify enrollees if their particular provider drops out of the network.

Response: Although a provider's contracting status has significant implications for patients—especially those who regularly see a particular provider for treatment of a chronic or complex condition—we do not set a uniform standard for notification of individual patients if their providers drop out of the QHP's network. Such a uniform standard on QHPs might not be consistent with practices in the non-Exchange market, and would raise QHP administrative costs.

Comment: HHS received comments that section 408 of the Indian Health Care Improvement Act (IHCIA), should be interpreted to obligate QHPs to include health programs operated by the IHS, Tribes, Tribal organizations, and Urban Indian organizations as providers in their networks. Several commenters also recommended that HHS clarify the applicability of section 206 of the ICHIA to QHPs.

Response: The primary purpose of section 408 of IHCIA is to deem Indian health providers as eligible to receive payment from Federal Health Care Programs for health care services provided to Indians if certain standards are met. Eligibility to receive payment under section 408 of IHCIA does not depend on in-network status with a QHP. Section 206 of IHCIA provides that all Indian providers have the right to recover from third party payers, including QHPs, up to the reasonable charges billed for providing health services, or, if higher, the highest amount an insurer would pay to other providers to the extent that the patient or another provider would be eligible for such recoveries. We believe that section 206 will foster network participation because it benefits QHPs to contract with Indian health providers to establish the payment terms to which the parties agree. Accordingly, we are not modifying the regulation text to reflect this comment.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 156.230 of the proposed rule with the following modification: in new paragraph (a)(2), we modified the standard previously proposed in § 155.1050 to clarify that a QHP issuer must maintain a provider network that is sufficient in number and types of providers to assure that all services will be accessible without unreasonable delay. We also specifically include providers that specialize in mental health and substance abuse, because mental health and substance abuse services are essential health benefits and because mental health parity applies to QHPs.

f. Essential Community Providers (§ 156.235)

In § 156.235, we proposed that a health plan's network must include a sufficient number of essential community providers who provide care to predominantly low-income and medically-underserved populations to

be certified as a QHP. We solicited comment on how to define a sufficient number of essential community providers. We also defined the types of providers included in the definition of essential community providers consistent with the Affordable Care Act, which specifically identifies all health care providers defined in section 340B(a)(4) of the PHS Act and providers described in section 1927(c)(1)(D)(i)(IV) of the Act. We also solicited comment on the extent to which the definition should include other similar types of providers that serve predominantly low-income, medically-underserved populations and furnish the same services as the providers referenced in section 340B(a)(4) of the PHS Act.

In the preamble to this section, we acknowledged that two provisions of the Affordable Care Act regarding payment of essential community providers and payment of Federally Qualified Health Centers (FQHCs) may conflict and invited comment on this issue. We also invited comment on specific payment and contracting issues related to Indian health providers. Finally, we requested comment on other special accommodations that should be made when contracting with Indian health providers, such as the use of a standardized Indian health provider contract addendum.

Comment: HHS received many comments seeking clarity on the proposed standard in § 156.235(a) that QHPs include in their provide networks a ''sufficient'' number of essential community providers. Many commenters recommended that QHP issuers include in their provider networks all essential community providers in the area; contract with any willing essential community provider; or contract with certain types of providers, such as family planning providers. Some commenters suggested HHS define sufficiency based on specific ratios of enrollees to providers, maximum travel times, or the Need for Assistance worksheet used by the Health Resources and Services Administration.[12] One commenter suggested that HHS base the sufficiency standard in part on the Health Professions Shortage Areas, Medically Underserved Areas and Medically Underserved Populations designated by the Health Resources and Services Administration.

In contrast, other commenters supported the proposed rule and urged HHS to maintain a broad definition of ''sufficient'' that allows Exchanges to establish standards appropriate for their States. A number of commenters urged HHS to strike a balance between having QHP issuers provide enrollees with adequate access to care from essential community providers and allowing QHP issuers to employ innovative network designs that improve quality and contain costs.

Response: Based on comments received, we believe that additional clarification of the ''sufficiency'' standard is necessary. Accordingly, we have modified final § 156.235(a) to direct that each QHP's network have a sufficient number and geographic distribution of essential community providers, where available, to ensure reasonable and timely access to a broad range of such providers for low-income, medically underserved individuals in the QHP's service area, in accordance with the Exchange's network adequacy standards. We believe that this approach more clearly articulates our expectations with respect to sufficiency than the standard included in the proposed rule with respect to essential community providers while continuing to balance the accessibility of essential community providers with network flexibility for issuers. We emphasize that Exchanges have the discretion to set higher, more stringent standards with respect to essential community provider participation, including a standard that QHP issuers offer a contract to any willing essential community provider. HHS intends to monitor the effectiveness of this provision in ensuring access to essential community providers, and it may be subject to further modification.

Comment: HHS received several comments suggesting that QHP issuers be exempt from the standard in proposed § 156.235(a) to include essential community providers in their provider networks if the Exchange's service area does not include low-income or medically-underserved populations.

Response: Section 1311(c)(1)(C) of the Affordable care Act directs all QHP issuers to include essential community providers in their provider networks; therefore, we have not amended the regulation to provide the exemption suggested by the commenter. Further, we note that the statute and final rule acknowledge that essential community providers may not be available throughout a QHP's service area. We believe that the inclusion of ''where available'' in both places creates flexibility for QHP issuers to contract with essential community providers in a manner that reflects the relative availability of these providers and the needs of local communities.

Comment: A number of commenters urged us to address the services that a QHP issuer should cover when provided by an essential community provider in its provider network, as described in proposed § 156.235(a)(1). Some commenters suggested that QHP issuers be directed to cover all services furnished by the essential community provider. Some commenters expressed concern that QHP issuers might contract with essential community providers for a few services, thus fulfilling the essential community provider ''sufficiency'' standard but prohibiting access to the full breadth of services through such providers.

Response: While we believe the statutory directive to include essential community providers in QHP provider networks must translate to meaningful access to care for low-income and medically underserved populations, section 1311(c)(1)(C) of the Affordable Care Act provides that nothing in the standard to include essential community providers obligates a QHP to cover any specific medical procedure. We generally anticipate and expect QHP issuers will contract with essential community providers for all services furnished by the provider that are otherwise covered by the QHP.

Comment: Several commenters supported an exemption from the standards in this section for staff-model health plans or integrated delivery system-based health plans, though one commenter urged HHS to make such an exemption contingent upon the organization demonstrating that its provider network still provides meaningful access to all forms of care to potential enrollees in the service area. One commenter suggested that HHS establish a provision similar to Medicaid's ''freedom of choice'' provision in 42 U.S.C. 1396(a)(23) in order to allow enrollees in staff-model QHPs to receive covered services from other providers if needed at no additional cost to the enrollee; the commenter specifically cited concerns that a religiously-sponsored integrated delivery health plan may not offer a full range of reproductive health services. Conversely, several commenters opposed any exemption for staff-model or integrated delivery system plans.

Response: Based on comments, we are persuaded that the obligation to contact with essential community providers should address the unique contracting structure of staff-model health plans and integrated delivery system-based health plans that provide a majority of services ''in-house.'' We are concerned that

[12] Available at: *http://www.hrsa.gov/grants/apply/assistance/NAP/forms/9needforassistance.pdf.*

establishing a standard for such plans to contract with essential community providers would result in these plans having to alter their business models, which may obviate the benefits of integration. In the proposed rule, we noted that we were weighing whether to provide consideration for plans that solely provide services ''in-house''. In light of comments, however, we recognize that staff model and highly integrated delivery system plans do not provide services solely ''in house''; rather, as a practical matter, they must provide some level of out-of-network services (for example, emergency services) and often must contract with Centers of Excellence or certain specialists to provide patients with access to highly specialized services. As a result, we have added under final § 156.235(b) a provision directing Exchanges to offer an alternate standard for plans with a majority of services furnished by ''in-house'' providers. Under the alternate standard, health insurance issuers that provide a majority of covered professional services through employed physicians or through a single contracted medical group may demonstrate their ability to provide an equivalent level of service accessibility for low-income and medically underserved individuals. We note that this alternate standard does not permit an Exchange to grant any QHP issuer a wholesale exception to standards related to essential community providers.

Comment: In response to the discussion in the preamble to the proposed rule, many commenters urged HHS to clarify the term ''generally applicable payment rates'' and ensure that essential community providers are reimbursed at a reasonable level by establishing minimum reimbursement standards for all essential community providers. Suggestions for such a benchmark included the Medicaid prospective payment system (PPS) rate under 42 U.S.C. 1396a(bb), Medicare rates, or a reimbursement rate at least equal to the issuer's negotiated rate with a similarly situated non-essential community provider. Commenters also recommended that QHPs offer ''generally applicable payment rates'' by service line to ensure that plans do not mask low rates for particular services by providing higher rates for less-utilized service, or otherwise discriminate against essential community providers in contract negotiations.

Response: QHP issuers should not discriminate against essential community providers through contract negotiations, or otherwise attempt to circumvent the obligation to include such providers in-network by offering unfavorable rates. In this final rule, we are not specifically establishing that a generally applicable payment rate be based on a particular benchmark or be calculated using a particular method (for example, by service line), but clarify that ''generally applicable payment rate'' means, at a minimum, the rate offered to similarly situated providers who are not essential community providers as defined in this section.

Comment: In response to the discussion in the preamble to the proposed rule, many commenters offered feedback on the appropriate payment rates for Federally-qualified health centers, or FQHCs. Several commenters supported payment of Medicaid PPS rates to all FQHCs some commenters advocated that Exchange provide wrap-around payments to FQHCs, as is currently the practice in State Medicaid programs. Other commenters supported payment of the issuer's generally applicable payment rates, while other commenters recommended allowing payment of mutually agreed upon rates. A few commenters offered unique suggestions not explicitly contemplated in the proposed rule, such as negotiating based on Medicare rates or permitting States to establish payment rates for essential community providers.

Response: The Affordable Care Act, at section 1302(g), establishes payment of FQHCs at the applicable Medicaid PPS rate. However, the Affordable Care Act also supports, at section 1311(c)(2), payment of essential community providers, including FQHCs, at the QHP issuer's generally applicable payment rate. We are amending the regulation text in final § 156.235(e) to codify both sections 1302(g) and 1311(c)(2) of the Affordable Care Act. We interpret these two provisions to mean that a QHP issuer must pay an FQHC the relevant Medicaid PPS rate, or may pay a mutually agreed upon rate to the FQHC, provided that such rate is at least equal to the QHP issuer's generally applicable payment rate.

Comment: Several commenters suggested that, rather than direct QHP issuers to contract with essential community providers under proposed § 156.235(a), Exchanges should provide incentives for QHP issuers to contract with essential community providers.

Response: Including essential community providers in QHP provider networks is a minimum certification standard specifically established by Section 1311(c)(1)(B) of the Affordable Care Act. This does not preclude Exchanges from offering incentives to QHP issuers (such as priority placement on the Exchange Internet Web site) to contract with more essential community providers than the Federal minimum standard.

Comment: In response to the list of essential community providers in proposed § 156.235(b), many commenters recommended inclusion of specific provider types, including but not limited to rural health clinics, community mental health centers, family planning clinics, Ryan White Care Act providers, pediatricians and children's hospitals, tribal health care providers, providers that serve limited English proficient populations, school-based clinics, or the entirety of a health system that includes a 340(B) or disproportionate share hospital. Some commenters also expressed concern about the potential for exclusion of or discrimination against specific types of essential community providers, such as those that are academic medical centers, by issuers, States or Exchanges. Conversely, a few commenters recommended that each State define essential community providers.

Response: We acknowledge that a wide variety of health care providers and institutions serve low-income and medically underserved individuals, and we note that the definition of essential community providers contained in the proposed rule encompasses a broad range of providers that serve low income and underserved communities, including FQHCs, disproportionate share hospitals, Ryan White Care Act Title II and III grantees, and urban Indian organizations. We clarify that the list of essential community providers provided in paragraphs (c)(1) and (c)(2) are not an exhaustive list and are not meant to exclude QHP issuers from contracting with other providers that serve predominantly low-income, medically underserved individuals.

In § 156.235(c) of the final rule, we are finalizing the proposed rule definition, with a slight modification. Based upon comments regarding the potential for exclusion of or discrimination against essential community providers and consistent with the intent explicit in section 1311(c)(1)(C) of the Affordable Care Act that access to essential community providers be maximized in QHPs, we clarify that any provider that meets the criteria for an essential community provider in § 156.235(c), or met the criteria on the publication date of this regulation unless the provider lost its status under § 156.235(c)(1) or (c)(2) thereafter as a result of violating Federal law, must be considered an essential community provider. We intend to monitor this policy and revisit as necessary.

We note that the definition in the final rule, taken from the section 1311(c)(1)(C) of the Affordable Care Act, provides a test to determine whether a provider is an essential community provider and a non-exhaustive list of examples. An Exchange may apply the test contained in the definition (providers that serve predominantly low-income, medically underserved individuals) to a particular service area to identify additional essential community providers. Finally, we note that each QHP provider network must be sufficient in number and types of providers to assure that all services, including mental health and substance abuse services, will be accessible without unreasonable delay.

Comment: A few commenters recommended that HHS develop a standard Indian Addendum for contracting with tribal health care providers.

Response: We recognize that furnishing QHP issuers with a standard Indian Addendum to a provider contract may make it easier for QHP issuers to contract with Indian providers. We note that QHP issuers may not be aware of the various Federal authorities that govern contracting with Indian health providers, and such an Addendum may lower the perceived barrier of contracting with Indian providers. We plan to develop a template for contracting between QHP issuers and tribal health care providers. While we do not uniformly mandate that QHP issuers use the template, we believe that QHP issuers will find it in their interest to adopt such a template when contracting with Indian providers. We also note that Exchanges may elect to direct QHP issuers to use the Indian Addendum when contracting with Indian providers.

Comment: One commenter recommended that all entities designated as essential community providers qualify for special drug pricing under section 340B(a)(4) of the Public Health Service Act. Conversely, another commenter requested that the final rule clarify that QHP issuers are not obligated to contract with all 340(B) pharmacies. One commenter suggested that HHS work with States and Exchange governing boards to ensure that providers have a clear understanding of how key 340(B) principles apply in the Exchange context in order to avoid confusion and violation of 340(B) anti-diversion rules.

Response: This rule concerns the establishment and operation of Exchanges and the certification standards for QHPs; nothing in this final rule changes or affects the operation of section 340(B) of the Public Health Service Act. As a result, requests to interpret section 340B of the Public Health Service Act are outside the scope of this final rule.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 156.235 of the proposed rule, with the following modifications: in paragraph (a)(1) we modified QHP issuer's contracting responsibilities with respect to essential community providers to reflect a reasonable access standard and a broad range of providers standard. In new paragraph (a)(2) we added an alternate standard for QHP issuers that provide a majority of professional services with ''in-house'' providers. In paragraph (c), we clarified the definition of an essential community provider. We also added new paragraphs (d) and (e) to interpret and implement Affordable Care Act section 1311(c)(2) (regarding payment rates to essential community providers) and section 1302(g) (regarding payment of FQHCs); in doing so we indicate that QHP issuers and FQHCs may negotiate rates and mutually agree on a payment rate other than the Medicaid PPS rate.

g. Treatment of Direct Primary Care Medical Home (§ 156.245)

In § 156.245, we proposed to permit QHP issuers to provide coverage through a direct primary care medical home (PCMH) that meets the standards established by HHS, provided that the QHP meets all standards otherwise applicable. We requested comment on what standards HHS should establish under this section.

Comment: Multiple commenters recommended that direct PCMHs described in proposed § 156.245 be accredited, or comply with existing industry standards such as the Joint Principles of the Patient-Centered Medical Home [13] developed by the Patient Centered Primary Care Collaborative. Other commenters expressed general support for PCMHs or provided data on the effectiveness of the PCMH model.

Response: We believe that Exchanges offer an opportunity to advance innovative models of delivery that can improve the care experience for patients and providers. Consistent with this overall goal, we have structured the direct PCMH provision to encourage, rather than limit, innovative care models. While we recognize the importance of accreditation and quality assurance, we are not establishing that direct PCMHs be accredited in order to participate in QHP networks. We encourage QHP issuers to consider the accreditation, licensure, or performance of all network providers.

Comment: Several commenters suggested that the definition of direct PCMHs in proposed § 156.245 be expanded to include accountable care organizations or specialists who serve as a patient's ''health home.''

Response: While non-primary care clinicians can play a significant role in care coordination, particularly for patients with multiple or complex conditions, the statute specifically provides for inclusion of primary care medical homes. We do not interpret that phrase as including providers of non-primary care services, such as specialists. However, we note that nothing in this section prohibits or limits a QHP issuer's ability to pursue other innovative care models or contracting structures, such as increasing payments to specialists who coordinate an individual's care, or contracting with accountable care organizations.

Comment: A few commenters requested that HHS clarify what coordination is contemplated between a QHP and a contracted direct PCMH under proposed § 156.245.

Response: QHP issuers that choose to contact with direct PCMHs for primary care services will need to consider how to promote a seamless consumer experience. For example, the QHP issuer should ensure that enrollees understand how to use the direct PCMH model, identify which services will be provided by the direct PCMH and which will not, and have clear information on how to access specialists and other non-primary care providers.

Comment: Several commenters generally recommended that HHS encourage QHP issuers to contract with direct PCMHs, direct issuers to contact with a specific number of direct PCMHs, establish that a certain percentage of network providers must be affiliated with direct PCMHs, or direct QHP issuers to report on the number of in-network direct PCMHs.

Response: While we believe that an Exchange could create incentives for QHP issuers to contract with direct PCMHs, such incentives are more appropriately considered within the context of local provider market conditions, including the relative availability of direct PCMHs. As a result, we are not directing Exchanges to create incentives for contracting with direct PCMHs. We encourage Exchanges to promote, and QHP issuers to explore,

[13] Available at: *http://www.pcpcc.net/content/joint-principles-patient-centered-medical-home.*

innovative models of delivery along the care spectrum.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 156.245 of the proposed rule without modification.

h. Health Plan Applications and Notices (§ 156.250)

In § 156.250, we proposed basic standards for the format of applications and notices provided by the QHP issuer to the enrollee, specifically that QHP issuers must adhere to the standards established for notices in § 155.230.

We received a number of comments on this section. Because § 156.250 cross-references to § 155.230, we have responded to all comments on applications and notices in § 155.230. Accordingly, we are finalizing § 156.250 as proposed.

i. Rating Variation (§ 156.255)

Consistent with the rating rules established in the Affordable Care Act, we proposed § 156.255 to codify the statutory provision that allows QHP issuers to vary premiums by the rating areas established under section 2701(a)(2) of the PHS Act. We further proposed that each QHP issuer offer a QHP at the same premium rate without regard to whether the plan is offered through an Exchange or whether the plan is offered directly from the issuer or through an agent. We also proposed that a QHP issuer cover all the following groups using some combination of the following categories: (1) Individuals; (2) two-adult families; (3) one-adult families with a child or children; and (4) all other families. We sought comment on how we might structure family rating categories while adhering to section 2701(a)(4) of the PHS Act, which establishes that any family rating using age or tobacco rating may only apply those rates to the portion of the premium that is attributable to each family member.

Additionally, we requested comment on how to apply four family categories when performing risk adjustment. We also invited comment on alternatives to the four categories for defining family composition, and how to balance potential consumer confusion associated with more categories while maintaining plan offerings and rating structures that are similar to those that are currently available in the health insurance market. Finally, we noted that we were also considering whether to direct QHP issuers to cover an enrollee's tax household, including for purposes of applying individual and family rates, and sought comment on the potential considerations of this approach.

Comment: A few commenters asked why the proposed rule did not address section 1312(c) of the Affordable Care Act related to a single risk pool.

Response: The proposed rule and this final rule only address standards that are unique to Exchanges, QHP issuers and QHPs. The single risk pool provision applies to health insurance issuers in the individual and small group market and to enrollees who do not enroll in health plans through the Exchange. Therefore, it is outside the scope of this final rule. We anticipate future rulemaking on other Affordable Care Act provisions that apply to insurance markets generally.

Comment: One commenter suggested that the final rule establish a process whereby a State demonstrates that existing State laws related to rating outside of the Exchange will not undermine the Exchange.

Response: We are continuing to evaluate the relationship and interaction of State rating laws, the market reform provisions in section 2701 of the PHSA, and the provisions to implement the Exchange standards. We may issue further guidance in the future.

Comment: In response to the proposed § 156.255(a) on rating areas, one commenter suggested that we codify the standard that rating areas must be applied consistently inside and outside of the Exchange, which we discussed in preamble of the proposed rule (76 FR 41901). A few commenters requested that HHS establish a standard set of criteria for rating area boundaries that reflect actual differences in health costs within a State.

Response: Section 2701(a)(2) of the PHS Act directs States to establish rating areas, which will be reviewed by the Secretary of HHS. Section 1301(a)(4) of the Affordable Care Act directly references the rating areas outlined in section 2701(a)(2) of the PHS Act, which ensures that the rating areas are applied consistently both inside and outside the Exchange. The requested provision is outside the scope of this final rule; we anticipate future rulemaking on other Affordable Care Act provisions that apply to insurance markets generally.

Comment: Several commenters requested that HHS more clearly define what ''same plans'' would need to be offered at the same premium rate for proposed § 156.255(b). The commenters raised concerns that issuers would offer two plans with very minor differences and then charge a different premium for what is essentially the same plan, which could result in adverse selection against the Exchange.

Response: We believe that, generally, this provision means that health plans that are substantially the same as a QHP should charge the same premium and encourage States to use this standard when evaluating compliance with this provision. HHS may further clarify this standard in future rulemaking or guidance.

Comment: Several commenters voiced support for proposed § 156.255(b), while others had questions regarding whether user fees charged for enrollment would undermine the same premium provision. Some commenters suggested that HHS direct Exchanges to apply user fees to QHPs offered outside of the Exchange in order to ensure pricing parity.

Response: We clarify that States have substantial flexibility in establishing a funding mechanism for an Exchange to meet the self-sustaining provision of section 1311(d)(5) of the Affordable Care Act, implemented in this final rule at § 155.160. As noted in the statute and the regulation text, user fees on QHPs are one mechanism to achieve this status. Such fees may be set based on a broad or narrow set of issuers, on enrollment volume, including enrollment that is not through the Exchange, or be set without regard to enrollment.

Comment: Several commenters suggested that we direct QHP issuers to offer QHPs outside of the Exchange.

Response: Nothing in Federal law prohibits a QHP issuer from offering the QHP for sale directly to an individual or through an agent/broker in addition to through the Exchange. We note that a State law may address this issue. Further, enrollees in such a plan would not qualify for advanced payments of premium tax credits, among other Exchange benefits.

Comment: In response to proposed § 156.255(c), several commenters raised issues regarding rating rules that were discussed in the proposed rule, including the incorporation of the tobacco rating factor described in section 2701(a)(1)(A)(iv) of the PHS Act (76 FR 41901). Other commenters made suggestions about the application of a rating structure to a tax household.

Response: In the final rule, we have removed proposed § 156.255(c), which addresses rating categories. We anticipate that implementation of section 2701(a)(1)(A) of the PHS Act will establish standards that apply to health insurance issuers in the individual and small group market, including QHP issuers.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 156.255 of the proposed rule, with the exception of removing paragraph (c).

j. Enrollment Periods for Qualified Individuals (§ 156.260)

In § 156.260, we proposed that QHP issuers must accept and enroll qualified individuals during the initial open enrollment period, during the annual open enrollment period thereafter, and during special enrollment periods, as applicable. We further proposed that QHP issuers adhere to the effective dates of coverage established in § 155.410 for all enrollment periods in the Exchange, and provide enrollees with notice of effective dates of coverage.

Comment: HHS received many comments about enrollment periods in accordance with § 155.410 and § 155.420, which are summarized and addressed in those sections of the final rule. One commenter remarked specifically on proposed § 156.260 and requested that HHS clarify whether a QHP could refuse enrollment to an applicant previously proven to have committed fraud.

Response: A QHP issuer may not refuse enrollment to a new applicant who has previously proven to have committed fraud. We note that section 2703(b) of the PHS Act, with which QHP issuers must comply, includes an exception to the guaranteed renewability standard in certain instances of fraud, but includes no parallel exception for new coverage. We further note that § 156.270(a) permits QHP issuers to rescind coverage under certain circumstances.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 156.260 of the proposed rule, with a minor technical modification and no substantive changes.

k. Enrollment Process for Qualified Individuals (§ 156.265)

In § 156.265, we proposed that QHP issuers adhere to the Exchange's process for enrollment in QHPs, which includes standards for the collection and transmission of enrollment information. Additionally, we proposed that QHP issuers use the application adopted in accordance with § 155.405 when accepting applications from individuals seeking to enroll in a QHP through the Exchange enrollment process. After collecting the uniform enrollment information from an applicant, we proposed that the QHP issuer send the information to the Exchange, in accordance with the standards established in § 155.260 and, as applicable, § 155.270.

Consistent with the standards established in accordance with § 155.260 and in § 155.270, we proposed that QHP issuers receive enrollment information electronically from the Exchange. We sought comment on the frequency with which plans should receive electronic enrollment information. We also proposed that QHP issuers abide by the premium payment process established by the Exchange and described in § 155.240.

We further proposed that QHP issuers provide enrollees in the Exchange with an enrollment package, and the summary of benefits and coverage document. We solicited comment on what should be included in an enrollment package. Finally, we proposed that QHP issuers reconcile enrollment files with the Exchange no less than once a month, and that QHP issuers acknowledge the receipt of enrollment information in accordance with Exchange standards established in § 155.400.

Comment: Some commenters recommended that proposed § 156.265(b) prohibit agents, brokers and Web-based entities from performing eligibility determinations.

Response: An agent, broker, or Web-based entity cannot perform eligibility determinations as part of enrollment through the Exchange. We note that section (b)(2)(A) of 36B of the Internal Revenue Code as amended by the Affordable Care Act establishes that an individual must enroll ''through the Exchange'' in order to access advance payments of the premium tax credit and cost-sharing reductions. However, in § 155.220(c)(1), we specify that an individual can be enrolled in a QHP through the Exchange with the assistance of an agent or broker only if the agent or broker ensures that the individual receives an eligibility determination through the Exchange Web site.

Comment: In response to the provisions described in proposed § 156.265(b), several commenters suggested that an individual have an eligibility determination before enrolling in a QHP. Other commenters expressed concern regarding the privacy of individuals' information when a QHP issuer facilitates the enrollment of an individual through the Exchange as described in proposed § 156.265(b), particularly when the individual seeks an eligibility determination. One commenter suggested that the QHP issuer refer individuals to the Exchange to carry out activities related to eligibility and enrollment.

Response: An individual must receive an eligibility determination from the Exchange before enrolling in a QHP through the Exchange. Accordingly, we have added new paragraph § 156.265(b)(1) to clarify that the QHP issuer may only enroll a qualified individual after the Exchange has notified the QHP issuer that the individual has been determined eligible consistent with the standards identified in part 155 subpart D, and on the basis of enrollment information sent from the Exchange to the QHP issuer. In addition, in § 156.265(b)(2), we specify that QHP issuers must direct the individual to file an application with the Exchange or ensure the applicant receives an eligibility determination for coverage through the Exchange through the Exchange Internet Web site. These provisions ensure that the applicant's information is collected only by the Exchange and thus firewalled from issuers and agents and brokers and accordingly protected. We do not provide regulatory standards for enrollment in a QHP that is not enrollment through the Exchange and defer to issuers as to their business practices for that. We reiterate that the assistance and protections described in part 155 apply to Exchange enrollment.

Protecting the personal health and other information provided by potential enrollees during the eligibility and enrollment process is critical. Further, we note that when the QHP issuer conducts relevant enrollment functions on its own behalf, that appears to be an activity covered by the HIPAA privacy and security rules in part 164.

Comment: HHS received a few comments in response to proposed § 156.265(d), which obligates issuers to follow the premium payment process established in § 155.240. One issuer recommended that payment directly to the QHP serve as the last resort for enrollees, another commenter requested that enrollees retain this option in the final rule. One commenter suggested that the enrollee pay only one entity (*that is,* the Exchange or the QHP issuer) for the entire benefit year. Finally, one commenter suggested that the Exchange be directed to aggregate premiums to avoid unpredictable administrative costs for issuers.

Response: As this option is statutorily established under section 1312(b) of the Affordable Care Act, consumers must have the option to remit premium payments directly to QHP issuers. Therefore, we are maintaining the language in § 155.240(a), which directs an Exchange to allow enrollees to pay

premiums directly to QHP issuers. For a full discussion of issues related to premium payment, please refer to the responses to comment in § 155.240.

Comment: Many commenters offered suggestions related to the enrollment package described under proposed § 156.265(e). Many commenters recommended that HHS establish meaningful access standards; standards suggested by commenters included language written at the 6th grade level, in-language ''taglines'' in fifteen languages directing enrollees to oral translation services, or existing HHS Limited English Proficiency guidance. Other commenters recommended that the package include information about how to file a complaint. Some commenters suggested that HHS direct issuers to follow existing State and Federal law governing the contents of enrollment packages.

Response: The enrollment information package is subject to the accessibility and readability standards established in § 156.250, which cross-references the access standards set forth in section § 155.230(b); therefore, we have not amended the regulation text in this section because it would be duplicative. States have the flexibility to establish that the enrollment package include information on grievance and appeal rights, but we note that this information is already described in the summary of benefits and coverage as specified in guidance published by the Departments of HHS, Labor, and the Treasury under PHS Act section 2715, which an enrollee would receive at essentially the same time. We also note that issuers must continue to follow existing law regarding the content of the enrollment package.

Comment: One commenter suggested that QHP issuers be able to attach the individual's choice of QHP to the individual's application to determine eligibility when that application originates with the QHP issuer.

Response: HHS will consider comments recommending that an individual's QHP selection be included in an application that is initiated with the QHP issuer as we develop guidance.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 156.265 of the proposed rule, with the following modifications: We have rewritten paragraph (b) to describe more clearly the process to enroll an applicant through the Exchange when the applicant approaches the QHP issuer directly. We modified paragraph (e) to state that the enrollment information package must comply with accessibility and readability standards in § 155.230(b). We eliminated paragraph (f) referencing the summary of benefits and coverage document. Because of the elimination of the paragraph on summary of benefits and coverage, the remaining provisions have redesignated numbers.

l. Termination of Coverage for Qualified Individuals (§ 156.270)

In § 156.270, we proposed standards for QHP issuers regarding the termination of coverage of individuals enrolled in QHPs through the Exchange, and proposed that a QHP issuer may terminate coverage for non-payment of premium, fraud and abuse, and relocation outside of the service area, among other situations permitted by the Exchange. Additionally, we proposed that QHP issuers provide a notice of termination of coverage to the enrollee and the Exchange, consistent with the standards for effective dates in § 155.430. We solicited comment on the information that should be included in the termination notice.

We also proposed standards for QHP issuers regarding the application of the grace period for non-payment of premiums by individuals receiving advance payments of the premium tax credit. Specifically, we proposed that a QHP issuer must provide a grace period of at least three consecutive months if an enrollee receiving advance payments of the premium tax credit has previously paid at least one month's premium. During the grace period, we clarified that the QHP issuer must pay all appropriate claims, apply any payment received to the first billing cycle in which payment was delinquent, and continue to collect the advance payments of the premium tax credit on behalf of the enrollee from the department of the Treasury.

We also proposed to direct QHP issuers to provide a notice to enrollees who are delinquent on premium payments and sought comment on the potential elements of such a notice. Additionally, we proposed that QHP issuers maintain records of terminations of coverage in accordance with Exchange standards as established in § 155.430. Finally, we proposed that QHP issuers abide by the effective dates for termination of coverage as described in § 155.430.

Comment: Many commenters were concerned that the notices described in proposed § 156.270(b) and (e) should meet meaningful access standards and are accessible for LEP individuals and for individuals with disabilities.

Response: QHP notices must meet standards for LEP individuals and for individuals with disabilities. Section 156.250 of the final rule states that all notices from a QHP issuer must meet the standards outlined in § 155.230(b).

Comment: Some commenters were concerned that a QHP issuer could terminate coverage under this section without sufficient notice. Other comments urged HHS to track reasons for termination of coverage for oversight purposes. Finally, a few commenters asked us to clarify how QHP issuers and the Exchange would share information about termination of coverage.

Response: In response to comments, we have added paragraph (b)(1) to the final rule to state that QHP issuers must notify enrollees at least 30 days prior to terminating coverage, and further that the notice must include a reason for termination. We also added 156.270(b)(2) to the final rule to state that the QHP issuer must notify the Exchange of the termination effective date and reason for termination.

Comment: A significant number of commenters voiced concerns that the proposed policy in § 156.270(d) that directed QHP issuers to pay all appropriate claims during the 3-month grace period would exacerbate adverse selection and increase premiums across enrollees. Several commenters representing the insurance industry specifically noted that under the proposed policy, rates would be built with an assumption that some portion of enrollees would pay 9 months of premium for 12 months of full coverage.

Several alternatives were suggested, such as allowing QHP issuers to pend claims after the first 30 days of non-payment, which would allow the issuer to put a hold on claims until the end of the grace period, at which point such claims would be paid if the premiums were paid, or denied if the premiums were not paid. Another commenter suggested allowing QHP issuers to deny coverage for certain categories of services, such as elective, non-emergency procedures, additions of new household members, or new prescription drugs. Other commenters suggested that each Exchange be allowed to determine the payment policy, and some recommended that Exchanges be responsible for helping to pay outstanding premiums or for seeking payment of outstanding premiums from an individual.

Response: We did not accept the recommendation that each Exchange set its own standard. Advance payments of the premium tax credit are directly tied to the grace period. Thus the grace period's parameters will have an impact on potential Federal tax liability of consumers and on Federal administration of the advance payments

of the premium tax credit. As a result, it is critical that the Federal government establish a uniform grace period policy to balance the potential impacts on the consumer's tax liability, coverage liability for issuers and providers, and appropriate administration of advance payments of the premium tax credit.

However, we are persuaded that the proposed standards should be adjusted in this final rule to decrease the opportunities for risk manipulation, adverse selection, and premium increases. In § 156.270(d)(1) and (d)(2) of the final rule, we now direct QHP issuers to pay all appropriate claims for services provided during the first month of the grace period. We believe that the first month of non-payment is the month in which an enrollee is the most likely to resume timely payments, and thus is the time period in which it is most important to ensure seamless coverage. As such, issuers should adjudicate claims as they would for any enrollee that pays his or her premium in full. However, we acknowledge that as the amount owed by an enrollee increases during the 3-month grace period, the risk of non-payment increases as well. To decrease the financial risk to issuers, and to individuals as described below, the final rule now permits QHP issuers to pend claims in the second and third months. We note that QHP issuers may still decide to pay claims for services rendered during that time period in accordance with company policy or State laws, but the option to pend claims exists. If the individual settles all outstanding premium payments by the end of the grace period, then the pended claims would be paid as appropriate. If not, the claims for the second and third months could be denied. The grace period under this final rule represents an extended time for enrollees to catch up on premium payments before coverage is terminated. Several considerations informed this amended approach.

First, the statutory 3-month grace period is substantially longer than many current grace periods and only applies to recipients of advance payments of the premium tax credit, assuming they have paid at least one monthly premium. In light of this fact, a grace period policy that is significantly different from the rest of the market could produce markedly different premiums between the Exchange and non-Exchange markets. The final rule approach helps mitigate these concerns by aligning the grace period claims payment standards more closely with current industry practices.

Second, in accordance with section 36B of the Code, individuals may incur a tax liability for any advance payments of the premium tax credit that are paid on their behalf for a month that such individual did not pay his or her portion of the premium. Under the policy in the proposed rule, an individual would potentially be liable for three months of advance payments of the premium tax credit, which could be substantial in some instances. Given the potential for a large tax liability on the part of enrollees receiving advance premium tax credits that fail to pay their residual premiums to QHP issuers, we believe that a retroactive termination date is appropriate to mitigate excessive individual financial exposure. Under the final rule policy, an individual's financial exposure would be limited to the first month's advance payment of the premium tax credit if the individual did not pay his or her portion of the premium for that month. We have provided several examples below to illustrate how the new grace period policy would work:

Grace Period Examples:

Assumptions for a monthly premium:

—Premium: $500.
—Advance premium tax credit share of premium: $450.
—Enrollee share of premium: $50.
—First month of grace period: March.
—Individual pays enrollee share of premium for January and February coverage.

Example #1: Individual misses $50 payment that is due February 28 for March coverage. Individual realizes mistake and pays $100 on March 31st for March and April coverage, satisfying all obligations for premium payments through the end of March.

○ Issuer adjudicates claims for March consistent with normal practices (that is, for non-grace periods)

○ Individual will have full coverage for March and April

○ Individual has paid full premium for March and April as is eligible for premium tax credit for March and April.

Example #2: Individual misses $50 payment that is due February 28 for March coverage and misses $50 payment that is due March 31st for April coverage. Individual Pays $150 on April 30 for March, April and May coverage.

○ Issuer adjudicates claims for March

○ Coverage continues for April and May (2nd and 3rd months of the grace period), but:

▪ Providers are notified of the potential for a denied claim.

▪ Issuer pends claims for services performed in April and May until individual pays outstanding premiums.

▪ Individual has paid full premium for March, April and May as is eligible for premium tax credit for March, April and May.

Example #3: Same facts as Example #2 except that individual does not pay enrollee's share of premium for March, April or May.

○ Coverage terminated retroactively to March 31

○ Issuer can deny claims for services rendered during April and May. Providers could then seek payment directly from the individual for any services provided during that time.

○ Individual may have additional tax liability attributable to the $450 for the advance payment of the premium tax credit paid on his or her behalf for March's coverage. The exact amount of additional tax liability would be determined in accordance with the rules for tax credit reconciliation under section 36B of the Code.

Comment: Several commenters supported the proposed standards in § 156.270(d) that QHP issuers pay all appropriate claims during the 3-month grace period for enrollees receiving advance payments of the premium tax credit. Commenters said this would protect providers that render services to such enrollees during the grace period. A few commenters were also concerned about the timing of claims, and suggested that QHP issuers be obligated to pay claims based on the date the service was rendered, and not the date the claim was submitted.

Response: We understand that pended claims increase uncertainty for providers and increase the burden of uncompensated care. The obligation to pay all appropriate claims established in the proposed rule was intended to protect providers during an extended grace period. However, given the significant concerns regarding premium increases and the potential tax liability to consumers, we were concerned that this approach did not strike the right balance. Because we share providers' concerns about incurring claims during the grace period that are not ultimately paid, we now establish in § 156.270(d)(3) of the final rule that QHP issuers notify providers who submit claims for services rendered during the second and third months of the grace period that any such claims will be pended, and potentially not reimbursed by the QHP issuer if the individual does not settle outstanding premium payments. We believe that there are technology-based approaches to provide this notification. We also clarify in § 156.270(d)(1) that the application of the grace period to claims is based on the date the service was rendered, and not the date the claim was submitted.

Comment: Some commenters suggested that the 3-month grace period proposed in § 156.270(d) should be

shorter, and that HHS refrain from establishing additional rules. Other commenters suggested extending the grace period to 6 months, at least for the first few years.

Response: As stated in the proposed rule, section 1412(c)(2)(B)(iv)(II) of the Affordable Care establishes that QHP issuers ''receiving advance payments of the premium tax credit with respect to an individual enrolled in the plan shall * * * allow a 3-month grace period for non-payment of premiums before discontinuing coverage'' (76 FR 41902). We do not believe that the statute provides the flexibility to alter the grace period timeframe.

Comment: Several commenters requested clarification on whether the grace period described in proposed § 156.270(d) would be triggered by a full non-payment of premium or a partial non-payment of premium.

Response: The 3-month grace period applies whenever the QHP issuer has received payment of less than the full amount of the enrollee's share of the premium for a given month. It is our understanding that issuers have varying practices related to the triggering of a grace period, with some issuers initiating a grace period for any payment that is not the full premium and others initiating a grace period only if the individual has not submitted an amount above some threshold. However, in order to be consistent with policy related to the advance payments of the premium tax credit, the enrollee must pay the full amount of his or her portion of the premium or the grace period would be triggered.

Comment: Several commenters voiced concerns about the potential for gaming during the grace period described in proposed § 156.270(d). Commenters suggested that we take action to prevent people from habitually paying 9 months of premiums, stopping premium payment for 3 months, and then enrolling in a new QHP to start the process over again. Commenter suggestions included: requiring payment of all outstanding premiums before enrollees can change issuers, enroll in a different QHP, or re-enroll in a QHP; establishing a 60-day waiting period for individuals who have been terminated for coverage due to non-payment of premiums but seeking re-enrollment in another QHP; allowing issuers to seek reimbursement for claims paid during the grace period from enrollee after termination; issuing a late enrollment penalty or establish a pre-existing condition exclusion period for individuals seeking re-enrollment after termination due to non-payment of premiums; prohibiting enrollment in a QHP until the following open enrollment period; prohibiting someone who has been terminated due to non-payment of premiums from qualifying for a special enrollment period later in the year; imposing penalties for repeat offenders, increasing premiums; allowing QHP issuers to collect the first and last month's premium at the time of application; and finally, limiting grace periods to one year. Other commenters recommended that States have the flexibility to establish their own protections against opportunistic consumer behavior.

Response: We did not adopt the recommendations regarding non-issuance of coverage for individuals who have outstanding premium payments for a previous QHP because we believe that there are implications for rescissions, guaranteed issue, and pre-existing condition policies. HHS will continue to explore options for incentivizing appropriate use of the grace period, either through future rulemaking or in the context of general insurance market reforms. We will also consider the implications for automatic redeterminations and reenrollment in instances where individuals have had their coverage terminated for non-payment of premiums. Gaming will not only affect issuers, but also represents potential for misuse of the advance payments of the premium tax credits. Given the compelling Federal financial stake in grace period, HHS will monitor this issue moving forward and will continue to work on the development of policies to prevent misuse of the grace period.

Comment: Many commenters voiced support of the continued issuance of advance payments of the premium tax credit on behalf of enrollees during the 3-month grace period, as proposed in § 156.270(e). Some commenters suggested that if QHP issuers were allowed to terminate coverage retroactively, then QHP issuers should be directed to return the advance payments of the premium tax credits.

Response: We have maintained the proposed rule policy that QHP issuers must continue to receive advance payments of the premium tax credit being paid on behalf of an enrollee in a grace period. In addition, we included in § 156.270(e)(2) an instruction for QHP issuers to return advance payments of the premium tax credit for the second and third months of the grace period for individuals who exhaust the grace period without paying outstanding premiums, because such individuals will have their coverage terminated retroactively to the end of the first month of the grace period. We note that, consistent with section 36B of the Code, individuals may owe a tax liability as a result of advance payments of the premium tax credit paid on their behalf during a month in which they did not pay their portion of the premium. Under the final rule, individuals will have a liability as a result of the advance payment of the premium tax credit for the first month of the grace period if they never pay their portion of the first month's premium. If an individual exhausts the grace period without paying all outstanding premiums, QHP issuers can terminate coverage retroactive to the end of the first month of the grace period and deny claims that were pended. An issuer who terminated coverage in this fashion would be obligated to return the advance payments of the premium tax credit made on behalf of the individual for the second and third months of the grace period.

Comment: Some commenters requested clarification of the proposed policy in § 156.270(g) regarding whether a partial payment could extend the grace period once it has already been triggered, or if only full payment of all outstanding premiums would allow an individual to resolve a grace period. Commenters supported the resetting of the grace period only when all outstanding payments are made.

Response: The grace period may only be reset be if an individual has paid all outstanding premiums. We believe that a ''rolling'' grace period that moves the initial date of the grace period in correlation with any payment made by an individual would be not only confusing to consumers but administratively burdensome, particularly in light of the revised payment policy described in paragraph (d). Therefore, in this final rule, we have added language to clarify this policy in § 156.270(g). Once a grace period has been initiated by a QHP issuer, the individual has three months to settle all outstanding premium payments, at which time the grace period is either resolved and pended claims are paid or the individual's coverage is terminated.

Comment: Commenters requested clarification on the proposed policy in § 156.270(g) regarding whether a QHP issuer could terminate coverage retroactively to the last date of payment, or whether the termination was prospective from the end of the 3-month grace period. Commenters also requested clarification regarding how advance payments of the premium tax credit and payments to providers would be reconciled if the date of termination were retroactive.

Response: We clarify in final § 156.270(g) that if an individual exhausts the grace period without settling all outstanding premium payments, then the QHP issuer can terminate coverage retroactively to the first day of the second month in the grace period. We understand that many States allow issuers to terminate to the last paid date of coverage. In addition, HHS issued rules concerning rescissions of health insurance coverage, under which issuers are permitted to cancel coverage retroactively due to a failure to timely pay premiums (PHS Act section 2712; 45 CFR 147.128). However, the final Exchange standards for QHP issuers add more consumer protections than the generally applicable PHS Act's standards. During the first month, full coverage will be provided and the QHP issuer will be able to keep the advance payment of the premium tax credit. As a result, we treat the last day of the first month of the grace period as the ''last paid date.'' We note that the enrollee may be obligated to repay the advance payment of the premium tax credit for the first month in the form of an additional tax liability if the individual does not pay the enrollee's portion of the premium. For purposes of claims payment, the QHP issuer must treat the first month of the grace period as if the full premium has been paid. However, the QHP issuer may pursue collection of the individual's portion of the premium; if the individual pays the unpaid enrollee portion of the premium, the individual would retain the potential to be eligible for the premium tax credit for that month.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 156.270 of the proposed rule, with the following modifications: We added paragraph (b)(1) to note that a QHP issuer must provide the enrollee with a notice of termination of coverage at least 30 days prior to effectuating termination. We added paragraph (b)(2) to clarify that the QHP issuer must give reason for termination in a notice. We have also amended the proposed policy regarding the statutory 3-month grace period for individuals receiving advance payments of the premium tax credit. As described in paragraphs (d) through (g), QHP issuers will now be directed to pay appropriate claims in the first month only of the grace period, and will be able to pend claims in the second and third months. QHP issuers must notify providers who submit claims that an enrollee is in the second or third month of the grace period and that a claim may be denied if the outstanding premiums are not paid in full. Finally, QHP issuers must retain advance payments of the premium tax credit made on behalf of an individual for the first month, and must return such payments for the second and third months to the Department of the Treasury. Finally, we redesignated proposed paragraphs (g) and (h) as (h) and (i), respectively, to accommodate other changes to this section.

m. Accreditation of QHP Issuers (§ 156.275)

In § 156.275, we proposed to codify the statutory provision that a QHP issuer be accredited on the basis of local performance in each of the nine categories listed in the Affordable Care Act, where ''local performance'' means performance of the QHP issuer in the State in which it is licensed. We further specified that a QHP issuer must be accredited by an entity recognized by HHS. We also proposed that a QHP issuer must obtain its accreditation within a time period established by the Exchange under § 155.1045.

Comment: In general, commenters supported accreditation as a condition of QHP certification. One commenter voiced concern over the cost of private accreditation and the impact on participation of issuers in Exchanges. Commenters also suggested additional areas that HHS should include in standards for accreditation beyond those specified in the proposed rule, including specific clinical measure sets that should be included, among others. Another commenter asked that new accreditation models be reviewed that are specifically developed for the individual and small group market. One commenter asked for clarification if States would be able to establish more stringent accreditation standards beyond the Federal minimum.

Response: While we understand that accreditation can be a costly and resource-intensive process for issuers, it is established in the Affordable Care Act for certification of QHPs. At this time we are also not adding any additional standards for accreditation beyond what is specified in the Affordable Care Act. The Affordable Care Act is clear as to which criteria should be included in accreditation standards and we are codifying the statute in this regard. We clarify that Exchanges may impose accreditation standards that are more stringent than those contained in the Affordable Care Act.

Comment: Several commenters suggested specific entities that should be recognized by HHS and asked that more than one accrediting entity be recognized. Other commenters asked HHS to specify which accreditation entities would be selected and requested including both private and public entities.

Response: We will be issuing future rulemaking to establish a process by which accrediting entities will be recognized. Comments that requested specific products be considered for accreditation are beyond the scope of this rule.

Comment: A commenter did not support the proposal to direct issuers to authorize the release of their accreditation survey.

Response: We codify the obligation that issuers authorize the release of their accreditation survey to the Exchange and HHS. We believe that this is necessary to monitor the accreditation of QHP issuers beyond what can be learned from a simple reporting of accreditation status. We are also exploring the extent to which data submitted on the accreditation survey may be used to fulfill quality reporting standards, which may help alleviate potential reporting burden on Exchanges and issuers.

Comment: In general, commenters supported establishing a timeline for accreditation of QHP issuers under proposed § 156.275(b). However, several commenters disagreed with our proposal to allow Exchanges to set the timeline and requested that HHS establish a Federal timeline for accreditation that all Exchanges must follow. Commenters also provided recommendations on appropriate accreditation timelines for HHS to establish, ranging from one to several years. Other commenters suggested that there should be a transition period for new plans to become accredited.

Response: The Affordable Care Act, at section 1311(c)(1)(D)(ii) clearly provides for the Exchange to establish the timeframe. Consistent with the statute, we believe that Exchanges are in the best position to determine the accreditation timeline for QHP issuers operating in their States. Exchanges are familiar with local market conditions and the needs of their constituents. Therefore, we are maintaining the regulation text as proposed.

Summary of Regulatory Changes

We are finalizing § 156.275 as proposed.

n. Segregation of Funds for Abortion Services (§ 156.280)

In § 156.280, we proposed to implement section 1303 of the Affordable Care Act by codifying the statutory provisions. This codification includes the non-discrimination clause for providers and facilities, a voluntary

choice clause for issuers with respect to abortion services, the standards for the segregation of funds for QHP issuers that elect to cover abortion services for which public funding is prohibited, and the associated communication standards related to such services. We solicited comment on the related model guidelines issued by HHS and the Office of Management and Budget on September 20, 2010,[14] noting that we intended the model guidelines to serve as the basis for the final rule.

Comment: A large number of commenters offered feedback on proposed § 156.280. Of these, many expressed general support for or opposition to abortion coverage in Exchanges. A number of commenters supported specific provisions of the proposed rule and recommended that they be finalized; for example, the voluntary choice provision for QHP issuers and the provision on the applicability of emergency services laws. Conversely, a few commenters recommended changes to the proposed provisions—such as that each Exchange be directed to include one QHP that covers non-excepted abortion services. A few commenters requested that HHS provide additional technical guidance on the provisions in section 1303 of the Affordable Care Act; for example, a few commenters suggested specific clarifications to the pre-regulatory model guidelines that describe high-level principles for QHP issuers' segregation plans, while other commenters recommended that Exchanges be directed to review the actuarial value of abortion coverage calculated by QHP issuers. Commenters also recommended that HHS clarify the provisions regarding separate payments for non-excepted abortion and all other services, specifically whether QHP issuers must collect separate payments from all enrollees or only from those receiving Federal financial assistance, whether QHP issuers may satisfy the separate payment provision by providing each enrollee with an itemized bill, and whether an enrollee's coverage would be terminated for failure to comply with the separate payment provision. A few commenters requested that HHS strengthen anti-discrimination protections for providers or expand the conscience protection. Finally, a few commenters raised concerns regarding provisions that HHS believes are addressed elsewhere in the final rule, such as privacy of individuals' QHP selections, and accessibility standards and other protections for QHP notices and plan information.

Response: We considered the comments received on this section, and are finalizing the provisions of proposed § 156.280 without modification, with the exception of finalizing the pre-regulatory model guidelines on issuer segregation plans released by HHS and the Office of Management and Budget.[15] Where future guidance is issued on this section, these comments will be taken into account.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 156.280 of the proposed rule, with the following modifications: we redesignated paragraph (e)(5)(ii) as (e)(5)(iv). In new paragraphs (e)(5)(ii) and (e)(5)(iii), we codified the pre-regulatory model guidelines on segregation of funds published by the Office of Management and Budget and the Assistant Secretary for Financial Resources as proposed.

o. Additional Standards Specific to the SHOP (§ 156.285)

In § 156.285, we proposed rating and premium payment standards for QHP issuers participating in the SHOP, including a proposal that the QHP issuer accept aggregated premiums, abide by the rate setting timeline established by the SHOP, and charge the same contract rate for a plan year. We also proposed that QHP issuers must accept and enroll applicants during the annual open enrollment period described in § 155.725 and the special enrollment periods described in § 155.420 (excluding paragraphs (d)(3) and (d)(6)), and they must ensure effective dates of coverage in accordance with § 155.410(c). We solicited comment on whether to direct QHPs in the SHOP to allow employers to offer dependent coverage.

We also proposed that QHP issuers abide by the SHOP enrollment timeline process standards, including the standards that QHP issuers must frequently accept electronic transmission of enrollment information from the SHOP, provide all new enrollees with the enrollment information package, and provide qualified employers and employees with the summary of cost and coverage document. We further proposed that QHP issuers reconcile enrollment files with the SHOP at least monthly. Additionally, we proposed that QHP issuers abide by the SHOP standards for acknowledgement of the receipt of enrollment information and issue qualified employees a policy that aligns with the qualified employer's plan year and contract.

We also proposed general standards related to termination of coverage in the SHOP that are largely similar to the standards for the Exchange with respect to their enrollees from the individual market. We noted that the QHP issuer would be directed to provide the qualified employers and employees with a notice of termination of coverage of enrollees and QHP non-renewal to ensure that the qualified employer is aware of the changes in coverage for its employees and the availability of coverage in the SHOP. We indicated that a QHP issuer must terminate all enrolled qualified employees of the withdrawing employer if the employer chooses to stop participating in the SHOP.

Comment: In response to proposed § 156.285(b), one commenter recommended that the employer, and not the SHOP, establish the specific standards and dates for open enrollment and special enrollment periods.

Response: We believe that States should have the flexibility in establishing their enrollment periods based on the specific market and employer circumstances in the State, as it often does today for the small group market.

Comment: One commenter recommended that proposed § 156.285(b)(2) specify that employees who enroll during a special enrollment period should be allowed to purchase coverage at the same rates as those employees who enrolled during the annual open enrollment period for that plan year.

Response: We note that § 156.210 directs an issuer to set rates for an employer that will remain in effect for the employer's entire plan year.

Comment: One commenter suggested that the preamble text, which states that the rule would direct issuers to provide all new enrollees with an enrollment information package as described in § 156.265(e), is inconsistent with the proposed regulation text in § 156.285(c)(3), which states that the enrollment information package is described in § 156.265(f).

Response: We have modified the final rule to correctly reference § 156.265(e).

Comment: One commenter requested clarification of the definition of a QHP for the SHOP.

Response: We note that all of the standards in part 156, including definitions, pertaining to QHPs also apply to the QHPs offered through the

[14] Available at: *http://www.whitehouse.gov/sites/default/files/omb/assets/financial_pdf/segregation_2010-09-20.pdf.*

[15] Available at: *http://www.whitehouse.gov/sites/default/files/omb/assets/financial_pdf/segregation_2010-09-20.pdf.*

SHOP in the small group market unless the regulation text explicitly indicates that a specific standard pertains only to QHPs offered to qualified individuals, or are otherwise exempted.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 156.285 of the proposed rule, with the following modifications in conformance with changes to part 155 subpart H: in new paragraph (b)(3) we clarified that a SHOP must offer an enrollment period to a newly qualified employee who becomes qualified outside of the initial or annual open enrollment period. In new paragraph (b)(4) we established that a SHOP must conform to the effective dates of coverage described in § 156.260 and § 155.720. In new paragraph (e) we clarified that QHP issuers participating in the SHOP may not impose minimum participation rules with respect to a QHP unless the SHOP authorizes the minimum participation rule in accordance with 155.705(b)(10). Finally, we made a limited number of technical changes to clarify the language in this section.

p. Non-renewal and Decertification of QHPs (§ 156.290)

In § 156.290, we proposed standards for QHP issuers that voluntarily do not renew participation of a QHP in the Exchange, including notification, benefit coverage standards, and reporting standards. Specifically, we proposed to direct QHP issuers that do not renew QHP participation to provide written notice to each enrollee. We solicited comment on the potential content of the non-renewal notice and any other information that we should consider including. We also proposed that if an Exchange decertifies a QHP, the QHP issuer must terminate coverage for enrollees only after the Exchange has notified the QHP's enrollees as described in § 155.1080 and enrollees have had the opportunity to enroll in other coverage. We requested comment on the extent to which enrollees should continue to receive coverage from a decertified plan.

Comment: One commenter recommended that HHS or Exchanges attach penalties to the decision not to seek recertification described in proposed § 156.290(a), such as barring the QHP from participating in the Exchange for one year following the non-renewal. Conversely, a few commenters requested that HHS prohibit Exchanges from imposing penalties or sanctions on plans that voluntarily non-renew.

Response: HHS lacks authority under the Affordable Care Act to impose any penalties for non-renewal of a QHP in an Exchange. Exchanges may take varied approaches to voluntary non-renewal; for example, some Exchanges may establish criteria for re-entry, while other Exchanges may utilize the standard certification process.

Comment: One commenter recommended that the final rule direct QHPs that choose not pursue recertification to complete data reporting 6 to 12 months after exiting the market.

Response: Obtaining data from non-renewing QHPs will be important for Exchanges. We note that § 156.290(a)(3) expressly obligates a non-renewing QHP to complete its reporting through the end of the plan or benefit year.

Comment: A few commenters suggested that HHS establish more advanced notice for non-renewal than the proposed deadline of September 15th.

Response: We believe that a deadline of September 15th is sufficiently far in advance of the annual open enrollment period to provide adequate notice for Exchanges and enrollees. Accordingly, we are finalizing that deadline as proposed.

Comment: Several commenters suggested that HHS direct QHPs to notify participating providers of a decision not to renew. These commenters further suggested that the QHP pay all incurred claims until participating providers have been notified.

Response: Section 156.290 of the final rule establishes that QHPs that choose not to pursue recertification must cover benefits for enrollees for the duration of the plan or benefit year. Similarly, QHPs must pay all claims incurred while certified and participating in the Exchange, subject to the terms and conditions of the QHP's contracts with providers. While participating providers have a significant interest in a QHP's decision not to seek recertification with the Exchange, we believe that establishing a standard for QHP issuers to notify participating providers would impose a significant burden on QHPs. Therefore, we are not adding such a standard in the final rule.

Summary of Regulatory Changes

We are finalizing § 156.290 as proposed.

q. Prescription Drug Distribution and Cost Reporting (§ 156.295)

In accordance with section 6005 of the Affordable Care Act, we proposed in § 156.295 that QHP issuers provide the following information related to prescription drug distribution—(1) The percentage of all prescriptions that were provided under the contract through retail pharmacies compared to mail order pharmacies, and the percentage of prescriptions for which a generic drug was available and dispensed compared to all drugs dispensed, broken down by pharmacy type, that is paid by the QHP issuer or pharmacy benefit manager (PBM) under the contract; (2) the aggregate amount, and the type of rebates, discounts, or price concessions, with certain exceptions, that the PBM negotiates that are attributable to patient utilization under the plan, and the aggregate amount of the rebates, discounts, or price concessions that are passed through to the plan sponsor, and the total number of prescriptions that were dispensed; and (3) the aggregate amount of the difference between the amount the QHP issuer pays the PBM and the amount that the PBM pays retail pharmacies, and mail order pharmacies, and the total number of prescriptions that were dispensed. We sought comment on how a QHP issuer whose contracted PBM operates its own mail order pharmacy can meaningfully report on element (3). We also requested comment on potential definitions for ''rebates,'' ''discounts'' and ''price concessions''; and noted that we were considering using the term ''direct and indirect remuneration,'' to encompass these various arrangements. We also requested comment on our proposed definition of PBM and whether we should define PBMs as any entities that perform specific functions on behalf of a health insurance issuer. We sought comment on how to minimize the burden of these reporting standards.

Finally, we also proposed to codify the statutory penalties for noncompliance, including $10,000 per day that information is not provided; contract termination if the information is not reported within 90 days of the deadline; and $100,000 per piece of false information provided.

Comment: In response to proposed § 156.295(a)(1)—(3) and the discussion in the preamble to the proposed rule, many commenters requested clarification of key terms used in this section, such as ''PBM,'' ''generic drug,'' ''bona fide service fees,'' and ''rebates, discounts, or price concessions.'' One commenter requested that stakeholders have future opportunities to review and comment on the technical specifications of this section. Some commenters supported the proposed definition of ''PBM,'' while others recommended a broader definition that would encompass all entities that provide

management services but do not negotiate directly with manufacturers. A few commenters requested clarification of this definition with respect to medical benefit and physician-administered drugs. With respect to the definition of ''generic drug,'' commenters offered numerous alternate definitions that HHS could adopt, including the definition provided in the Social Security Act, single source versus multiple source drugs, or therapeutically and bioequivalent. Several commenters responded to HHS' request for comment on the definition of ''rebates, discounts, or price concessions.'' Some urged HHS to codify the statute as written, or proposed specific definitions for these terms. Other commenters recommended use of the term ''direct and indirect remuneration'' and recommended that CMS maintain consistent definitions across the Exchange and the Medicare program.

Response: Section 6005 of the Affordable Care Act includes similar standards for both the Medicare program and the Exchange. We believe that many of the entities and issuers that will report these data may participate in both programs. Therefore, we will align definitions with the Medicare program to the extent possible. We note that we are maintaining the proposed definition of ''PBM'', which we believe encompasses a sufficiently broad spectrum of entities and activities. We are similarly maintaining the proposed interpretations of ''generic drug'' and ''rebates, discounts, or price concessions.'' Finally, we are revising the description of ''bona fide service fees'' to better align with the definition included by the Medicare program in a proposed rule released on October 11, 2011, and to provide for greater flexibility with respect to this definition, given that bona fide services are subject to change as new ones are developed or other bona fide services are discontinued. Accordingly, we are not finalizing the specific examples of bona fide service fees included in the proposed rule.

As we noted in the preamble to the proposed rule, we intend to clarify these standards through forthcoming guidance. We anticipate continuing to work with stakeholders to refine these standards.

Comment: One commenter requested that HHS clarify the standard in proposed § 156.295(a)(1) that QHP issuers report generic dispending rates ''broken down by pharmacy type.''

Response: We clarify that paragraph (a)(1) directs QHP issuers to report generic dispensing rates separately for each of four types of pharmacies: mail order pharmacies, independent pharmacies, supermarket pharmacies, and mass merchandiser pharmacies.

Comment: In response to HHS' request for comment on how a QHP issuer whose contracted PBM operates its own mail order pharmacy can meaningfully report on the aggregate difference between what the issuer pays the PBM and what the PBM pays the pharmacy, several commenters suggested that mail order pharmacies owned by PBMs do not present unique challenges with respect to this reporting activity.

Response: As noted in the preamble to the proposed rule, we expect to issue further guidance on this section, and will continue to engage stakeholders to refine these reporting activities.

Comment: In response to HHS' request for comment on how to minimize the burden associated with proposed § 156.295(a)(1)—(3), several commenters recommended that HHS limit the collection of information to those data elements listed in the Affordable Care Act. Commenters also suggested that HHS harmonize reporting standards across programs to the extent possible, such as by using the PDE reporting format currently used in the Medicare Part D program. Multiple commenters recommended that HHS monitor compliance with this section through audits only, either of QHP issuers or of PBMs.

Response: We clarify that HHS will only collect those data elements specified in the Affordable Care Act. We further intend to be consistent across programs to minimize burden and promote consistency, and are aligning the definitions of key terms used in this section with the Medicare Part D program. We expect to provide additional detail on the exact format and content of this reporting in future guidance.

Comment: In response to the reporting standards identified in proposed § 156.295(a), a few commenters requested more detailed information on why HHS needs to receive the data and how the data will be used. Conversely, some commenter favored greater transparency of prescription drug cost information and recommended that the information be reported to the Exchange.

Response: Section 6005 of the Affordable Care Act directs HHS to collect the data elements listed in the statute. We note that the Affordable Care Act limits the disclosure of these data, which we codify in paragraph (b). At this time we are still refining the process for reporting and uses for these data, and expect to provide additional guidance on this section in the future.

Comment: A few commenters raised concerns about QHP issuers' ability to comply with the reporting standards in proposed § 156.295(a)(1) through (3), noting that current contracts between issuers and PBMs do not typically cover these data elements.

Response: We believe that issuers and PBMs will have sufficient time to renegotiate or modify these contracts before reporting becomes necessary.

Comment: One commenter recommended that HHS establish some flexibility in the application of penalties to accommodate delays in the realization of price concessions and exceptional circumstances such as IT failure or human error.

Response: HHS intends to issue further guidance on these reporting standards, including how the statutory penalties may be applied.

Summary of Regulatory Changes

We are finalizing the provisions proposed in § 156.295 of the proposed rule, with the following modification: in paragraph (a)(2)(i) we revised the description of ''bona fide service fees'' to better align with the definition included by the Medicare program in a proposed rule released on October 11, 2011, published at 76 FR 63018, and to provide for greater flexibility with respect to this definition, given that bona fide services are subject to change as new ones are developed or other bona fide services are discontinued.

1. Subpart F—Consumer Operated and Oriented Plan Program

Definitions (§ 156.505)

Section 156.505 sets forth definitions for terms that are used throughout subpart F for the CO–OP program. In the final rule, ''Establishment of Consumer Operated and Oriented Plan (CO–OP) Program (76 FR 77392), we revised the definitions of several terms to remove references to the ''Establishment of Exchanges and QHPs'' rule (76 FR 41866), because it had not yet been finalized. We also added definitions for several terms as they were proposed in the rule, ''Establishment of Exchanges and QHPs'' (76 FR 41866), because those terms were referred to within the revised definitions.

In the CO–OP Program Final Rule, we stated that once the ''Establishment of Exchanges and QHPs'' rule (76 FR 77392) was finalized, we would revise the definitions in section 156.505 to incorporate the definitions adopted in the new part 155. Consistent with this intent, we have revised the definitions

for the terms ''CO OP QHP,'' ''Exchange,'' ''individual market,'' ''issuer,'' ''small group market,'' ''SHOP,'' and ''State'' from the CO–OP Program Final Rule to reference the definitions in the new part 155. As explained later in this preamble, the changes in this section are being issued on an interim basis. These revisions ensure that the definitions used in subpart F of section 156 are consistent with the definitions in the new part 155. We also removed the definitions of ''group health plans,'' ''health insurance coverage,'' ''small employer,'' ''qualified employer,'' and ''QHP'' because these terms are no longer referenced in the aforementioned definitions.

We made a technical change to section 156.510(b)(2)(ii). When referring to an applicant that ''has as a sponsor a nonprofit, not-for-profit, public benefit, or similarly organized entity that is also a sponsor for a pre-existing issuer,'' we inadvertently used the defined term ''sponsor.'' Our intent was to refer to an entity that sponsors a pre-existing issuer and not an entity that serves as a CO–OP's sponsor. Therefore, we revised this provision to refer to an applicant that ''has as a sponsor a nonprofit, not-for-profit, public benefit, or similarly organized entity that also sponsors a pre-existing issuer.''

C. Part 157—Employer Interactions with Exchange and SHOP Participation

In part 157, we proposed standards that address qualified employer participation in SHOP. Also, we briefly outlined employer interactions with Exchanges related to the verification of employees' eligibility for qualifying coverage in an eligible employer-sponsored plan.

1. Subpart A—General Provisions

Subpart A outlines the basis and scope for part 157 and defines terms used throughout part 157.

a. Basis and scope (§ 157.10)

In § 157.10, we proposed the general statutory authority for the proposed regulations and outlined the scope of part 157, which is to establish the standards for employers in connection with Exchanges. We did not receive specific comments on this section and are finalizing the provisions as proposed.

b. Definitions (§ 157.20)

In § 157.20, we proposed definitions for terms used in part 157 that need clarification. The definitions presented in § 157.20 are taken directly from the statute or based on definitions we proposed in part 155 or part 156. For instance, we stated that the terms ''qualified employer,'' ''qualified employee'' and ''small employer'' have the meaning given to the terms in § 155.20.

We did not receive specific comments on this section and are finalizing the provisions as proposed. Furthermore, we are finalizing the definitions proposed in § 157.20 of the proposed rule without modification.

2. Subpart C—Standards for Qualified Employers

Subpart C of this part outlines the general provisions for employer participation in SHOPs. As we noted in the preamble to the proposed rule, this subpart substantially mirrors and complements subpart H of part 155.

a. Eligibility of Qualified Employers to Participate in the SHOP (§ 157.200)

In § 157.200, we proposed the standards for an employer that seeks to offer health coverage to its employees through a SHOP. We proposed that only qualified employers may participate in a SHOP. In the preamble to the proposed rule, we noted that some small employers may have employees in multiple States or SHOP service areas, referencing proposed § 155.710, which would allow multi-State employers flexibility in offering coverage to their employees. We did not receive specific comments on this section and are finalizing the provisions as proposed.

b. Employer Participation Process in the SHOP (§ 157.205)

In § 157.205, we proposed the process for employer participation in the SHOP. Specifically, we proposed that a qualified employer make available QHPs to employees in accordance with the process developed by the SHOP pursuant to § 155.705, and that a qualified employer participating in a SHOP disseminate information to its employees about the methods for selecting and enrolling in a QHP. We also proposed that a qualified employer submit premium payments according to the process proposed in § 155.705. Additionally, we proposed that a qualified employer must provide an employee hired outside of the initial enrollment or annual open enrollment period with specific information.

We further proposed that a qualified employer provide the SHOP with information about individuals or employees whose eligibility to purchase coverage through the employer has changed. We also proposed that a qualified employer adhere to the annual employer election period to change program participation for the next plan year. In § 155.725, we proposed that a qualified employer may begin participating in the SHOP at any time.

Finally, we proposed that if a qualified employer remains eligible for coverage and does not take action during the annual employer election period, the employer would continue to offer the same plan, coverage level or plans selected the previous year for the next plan year unless the QHP or QHPs are no longer available. We invited comments regarding the feasibility of the processes established in this section and the implications for small employers and their employees.

Comment: Some commenters requested that the final rule direct the SHOP to create a specific timeline for employers to notify their employees regarding their coverage options. Some commenters strongly supported the suggestion that the SHOP create a toolkit to help qualified employers explain the enrollment process and the choices available to employees.

Response: SHOPs may support employers through electronic means and through informational packages in communicating with their employees about available coverage options, and note that nothing in this section would preclude a SHOP from developing such resources. We do not codify an employer notification standard because we think it unnecessary.

Comment: One commenter stated that HHS should clarify that qualified employers offering coverage through the SHOP should be able to choose which QHPs they will offer their employees rather than allowing SHOPs to potentially decide employer offerings.

Response: Section 1311 of the Affordable Care Act directs a SHOP to, at a minimum, offer coverage to qualified employees as follows: qualified employers select a cost sharing level, within which qualified employees may select any available QHP. We recognize the need to balance the extent of employer and employee choice against the potential for risk selection resulting from those choices. As discussed more fully in the comment and response section of § 155.705(b)(2) and (3), we have neither specified nor restricted the range of additional employer options a SHOP may offer. Therefore, we are finalizing the provisions of this section as proposed with minor edits for better clarity and precision.

Summary of Regulatory Changes

We are finalizing the definitions proposed in § 157.205 of the proposed rule with the following modification: in paragraph (e)(1) we clarify that a SHOP

must offer an enrollment period to a newly qualified employee beginning on the first day of such employee becoming qualified.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

Based on the comments that we received on the Exchange establishment and eligibility proposed rules, we believe that there are new options and specific standards that should be implemented in connection with eligibility determinations. Specifically, we finalize here the ability of an Exchange to fulfill minimum functions without making eligibility determinations for Medicaid or CHIP, advance payments of premium tax credits, or cost-sharing reductions, provided that certain conditions and performance standards are met. As this option for a bifurcation of the responsibility to determine eligibility was not included in the proposed rule, the proposal also did not address the regulatory framework and standards necessary under this option to achieve a system of streamlined and coordinated eligibility and enrollment, the major goal underpinning our proposals in the Exchange eligibility proposed rule (76 FR 51204). In this rule, in part 155 subpart D in the sections identified below, we outline the options and approach to maintain the seamless consumer experience while allowing States to design the eligibility process to best match their current systems and capacity and State policy goals.

A compliant system for eligibility determination is critical to the establishment and implementation of Exchanges. In this final rule, we provide additional flexibility for how and by which eligibility for various insurance affordability programs will be made than was proposed in the Exchange proposed rules released in the summer of 2011. We also outline certain timeliness standards and agreements to permit a non-integrated approach to eligibility determination that still affords applicants a seamless path to enrollment in coverage but would not increase administrative burden and costs.

In addition, we finalize on an interim basis certain eligibility standards for cost-sharing reductions for multi-state households, Exchange timeliness standards for eligibility determinations, Exchange timeliness standards for administration of cost-sharing reduction and advance payments of premium tax credit, and a limited exception to the general verification rules for individuals in special circumstances. Although the proposed rule did not clearly and consistently address these timeliness provisions, commenters indicated the importance of such standards and we recognize the importance of providing finality for these standards at this time. We finalize an interim provision, at § 155.315(g), to provide a process by which the Exchange must complete verifications of information for applicants without documentation; this interim provision is also included in the Medicaid final rule. This provision was not proposed but several commenters raised the need for such a limited exception to the verification procedures otherwise required in subpart D. Further, HHS and CMS received comments in response to the Exchange Eligibility proposed rule and the Medicaid proposed rule related to better alignment of the Exchange and Medicaid and CHIP programs. Interim final provisions to set parameters for cooperation and coordination of these programs are included here at § 155.345(a) and (g).

The process for approval of State-based Exchanges must begin prior to January 1, 2013, a date by which HHS must approve (or conditionally-approve) States-based Exchanges for the 2014 coverage year. States that elect to establish an Exchange must make and implement critical decisions in order to seek approval of a State-based Exchange, including those about how eligibility determinations will be made. As they make these decisions, it is essential that States know the standards and necessary agreements associated with the new bifurcation alternatives for making eligibility determinations, the additional parameters for cooperation and alignment with Medicaid and CHIP programs, and the new rules governing Exchange eligibility determinations. Like the new bifurcation options described above, the new standards associated with Exchange determinations are also integral to developing and establishing an Exchange—and the systems to support it—in order to meet the January 1, 2013 deadline for HHS approval. For example, the timeliness and verification standards for Exchange eligibility determinations need to be part of the eligibility determination system that is developed. Similarly, the timeliness standards associated with administration of cost sharing reductions and premium tax credits are necessary to include in the initial establishment of Exchange systems. Accordingly, we believe we need to finalize these provisions as soon as possible to provide States the information they need for Exchange establishment.

As a result, based on the comments to the 2011 Exchange proposed rules regarding these policies, we believe it would be contrary to the public interest to delay issuing new eligibility determination and timeliness standards rules. Further, providing public notice and additional comment periods for these policies would not provide States with sufficient lead time to take advantage of and incorporate these additional policies, prepare their State Exchange Blueprints, and complete the State Exchange readiness assessments process as set out in the proposed and this final rule. In light of the timing constraints, we are soliciting additional comment and issuing as interim final the following provisions:

- § 155.300(b)—Related to Medicaid and CHIP regulations;
- § 155.302—Related to options for conducting eligibility determinations;
- § 155.305(g)—Related to eligibility standards for cost-sharing reductions;
- § 155.310(e)—Related to timeliness standards for Exchange eligibility determinations;
- § 155.315(g)—Related to verification for applicants with special circumstances;
- § 155.340(d)—Related to timeliness standards for the transmission of information for the administration of advance payments of the premium tax credit and cost-sharing reductions; and
- § 155.345(a) and § 155.345(g)—Related to agreements between agencies administering insurance affordability programs.

We also received comments on the Exchanges establishment proposed rule regarding the need for performance and training standards that should be developed by HHS or required by HHS for agent and brokers who are assisting individuals with applications for insurance affordability programs. The proposed rule discussed and solicited comment about how to incorporate agents and brokers in the process of enrolling qualified individuals and qualified employers through the

Exchange; provisions to achieve that policy goal are finalized in this rule in light of the comments received to the proposed rule.[16] We did not propose or solicit comment on specific standards related to the provision of application assistance by agents and brokers. To provide useful assistance, agents and brokers should be fully aware of the complex eligibility and verification standards that will be used to determine eligibility for advance payment of premium tax credits and cost-sharing reductions. Also, in connection with this assistance, agents and brokers may gain access to a potential enrollee's income information, including access to sensitive tax data. Because the proposed rule did not apply training or performance standards to agents and brokers in connection with providing assistance to applicants, we did not address the regulatory framework supporting standards to ensure that agents and brokers are cognizant of the eligibility determination standards and process, maintain the confidentiality of such data, and operate in a manner that support their access to such data. In § 155.220, we describe these standards in more detail and outline their importance and connection to privacy and security standards described elsewhere in this rule.

Agent and brokers, where permitted to operate in a State, may serve an important role in assisting individuals in applying for coverage in the Exchange and with assisting individuals in gaining access to health insurance affordability programs. Because open enrollment for Exchanges will begin on October 1, 2013, and Exchanges require lead time to develop and implement privacy and security standards, agreements, training programs for agent and brokers, as well as systems to support agents and brokers working with Exchanges. As a result, we find that providing public notice and additional comment periods for these policies would not provide States with sufficient lead time to take advantage of and incorporate these additional policies prior to Exchange approval under the processes as set out in the proposed and this final rule. In light of the timing constraints, we are also soliciting additional comment and issuing as interim final the following provision:

• § 155.220(a)(3)—Related to the ability of a State to permit agents and brokers to assist qualified individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs.

For the reasons stated above, we find good cause to waive the notice of proposed rulemaking and to issue these specific portions of this final rule on an interim basis. We are providing a 45-day public comment period in connection with these provisions.

Finally, this final rule makes a small number of technical changes to the provisions relating to CO–OPs, 45 CFR part 156 subpart F. We find there is good cause to waive notice and comment rulemaking for these changes because soliciting comment on them is unnecessary. These changes do not alter the substance of the CO–OP regulations and are therefore being finalized in this rule. As discussed the preamble above, they are being made principally to minimize duplicative definitions within parts 155 and 156.

IV. Provisions of the Final Regulations

For the most part, this final rule incorporates the provisions of the proposed rule. Those provisions of this final rule that differ from the proposed rule are as follows:

Changes to § 155.20

• Changes full definitions to statutory and regulatory definitions, where applicable, including the definitions of ''applicant,'' ''eligible employer-sponsored plan,'' ''health plan,'' ''plain language,'' ''individual market,'' and ''small group market.''

• Added definitions for ''application filer,'' ''educated health care consumer,'' and ''Exchange Blueprint.''

Changes to § 155.105

• Adds that HHS would consult with other relevant Federal agencies in approval of State Exchanges.

• Establishes timeframe for review of significant changes to one where any change would receive written approved or denial within 60 days, or the approval would be automatic after 60 days (which may be extended by 30 days by HHS).

Changes to § 155.110

• Establishes that other State agencies are eligible contracting entities (such as departments of insurance).

• Establishes that Exchange boards must have at least one consumer representative on a governing board.

Changes to § 155.160

• Streamlines language regarding user fees, and removed policy that States announce user fees annually.

Changes to § 155.200

• Removes appeals of eligibility determinations as a minimum Exchange function.

• Adds a clarification that in carrying out its statutorily-required responsibilities, the Exchange is not construed to be acting on behalf of a QHP to convey that Exchanges are not automatically considered HIPAA business associates.

Changes to § 155.205

• Adds more detail regarding meaningful access standards.

• Clarifies standards for persons with disabilities, including the provision of auxiliary aids at no cost to the individual.

• Outlines standards for limited English proficient individuals, including oral and written translations and the use of taglines on the Exchange Web site.

Changes to § 155.210

• Directs Exchanges to develop and publicly disseminate conflict of interest standards and training standards for entities to be awarded Navigator grants.

• Applies privacy and security standards to Navigators.

• Establishes that at least one Navigator entity must be a community and consumer-focused non-profit group.

• Clarifies entities that are not eligible to serve as Navigators.

• Prohibits Navigators from receiving compensation by issuers for enrollment into plans outside of the Exchange.

Changes to § 155.220

• Establishes standards related to the ability of a State to permit agents and brokers to assist qualified individuals enrolling in QHPs through an Exchange; as described elsewhere in this rule, this provision is being published as interim.

• Establishes participation standards for agents and brokers to facilitate QHP selection through a non-Exchange Web site.

Changes to § 155.230

• Aligns notices with expanded meaningful access standards in § 155.205.

• Maintains standard that the Exchange must re-evaluate the appropriateness and usability of applications, forms, and notices, but removes the policy that this must occur ''on an annual basis and in consultation with HHS in instances when significant changes are made.''

• Adds that a notice must include a reason for intended action.

[16] We direct attention to § 155.220(a)(2) and the preamble for that section for a more detailed discussion.

Changes to § 155.240

• Removes duplicative standard for the Exchange to accept aggregated payments from qualified employers; § 155.705(b)(4) retains the premium aggregation function for the SHOP.

Changes to § 155.260

• Removed definition of ''personally identifiable information.''

• Includes more specific standards for privacy and security of personally identifiable information.

• Includes privacy and security principles based on the Fair Information Practice Principles (FIPPs) framework adopted by ONCHIT and a list of critical security outcomes.

• Clarifies that the privacy and security standards of this section apply only to information created or collected for the purposes of carrying out Exchange minimum functions.

• Expands the scope of information to which the standards apply to information created, collected, used, or disclosed by an Exchange or other individual or entity that has an agreement with the Exchange.

• Adds the standard that the Exchange workforce complies with the privacy and security policies and procedures developed and implemented by the Exchange.

• Establishes that Exchanges must develop and utilize secure electronic interfaces when sharing personally identifiable information electronically.

• Adds standards for data matching and sharing arrangements that facilitate the sharing of personally identifiable information between the Exchange and agencies administering Medicaid, CHIP, or the BHP.

Changes to § 155.300

• Adds that references to Medicaid and CHIP regulations in this subpart refer to those regulations as implemented in accordance with rules and procedures which are the same as those applied by the State Medicaid or State CHIP agency or approved by such agency in the agreement described in § 155.435(a), and as described elsewhere in this rule, this provision is being published as interim final.

Adds § 155.302

• Adds section outlining options for (1) the Exchange to conduct assessments of eligibility for Medicaid and CHIP rather than an eligibility determination for Medicaid and CHIP, and; (2) the Exchange to implement a determination of eligibility for advance payments of the premium tax credit and cost-sharing reductions for the Exchange, and as described elsewhere in this rule, this provision is being published as interim.

• Includes standards for such assessments and eligibility determinations, and as described elsewhere in this rule, this provision is being published as interim.

Changes to § 155.305

• Adds language throughout to clarify that individuals must be ''living'' in the service area of the Exchange in addition to the prior standards for residency, in order to align with changes to Medicaid residency standards.

• Adds that an applicant age 21 and over also meets the residency standard if he or she has entered the service area of the Exchange with a job commitment or seeking employment (whether or not currently employed), in order to align with changes to Medicaid residency standards.

• Adds language clarifying how to address cost-sharing reductions in situations in which multiple tax households are covered by a single policy, and as described elsewhere in this rule, this provision is being published as interim.

• Clarifies that cost-sharing reductions use the same household income and FPL definitions as advance payments of the premium tax credit.

Changes to § 155.310

• Adds language directing Exchanges to obtain attestations from a tax filer regarding advance payments of the premium tax credit, with flexibility to identify specific attestations in future guidance.

• Adds language clarifying that applicants must provide social security numbers.

• Adds a standard that the Exchange must determine eligibility promptly and without undue delay, and as described elsewhere in this rule, this provision is being published as interim.

• Adds content, consistent with the statute, to the notice to an employer regarding an employee's eligibility for the advanced payment of tax credits.

• Adds the standard to provide employer with an indication the employee has been determined eligible for advance payments of the premium tax credit, that the employer may be liable for the payment assessed under section 4980H of the Code if they have more than 50 full-time employees, and that the employer has the right to appeal the determination.

Changes to § 155.315

• Provides flexibility for the Exchange to accept attestation of residency or examine electronic data sources, regardless of the choices made by the State Medicaid or CHIP agencies.

• Adds provision specifying that the Exchange will validate all social security numbers with SSA.

• Allows applicants and application filers to submit documentation to resolve inconsistencies via channels available for submission of application.

• Includes a new provision which specifies that the Exchange will accept an applicant's attestation if documentation with which to resolve an inconsistency does not exist or is not reasonably available, with the exception of inconsistencies related to citizenship and immigration status, and as described elsewhere in this rule, this provision is being published as interim.

Changes to § 155.320

• Sets forth that if an applicant's attestation to projected annual household income is no more than ten percent below his or her prior tax data, the Exchange must rely on the attestation without further verification as part of the alternate verification process, and specifies that if his or her attestation is greater than ten percent below his or her prior tax data, the Exchange will conduct further verification.

• Allows the use of the alternate income verification process when a tax filer's filing status has changed, as directed by statute.

• Allows the use of the alternate income verification process when a tax filer's family composition has changed or is reasonably expected to change.

• Clarifies that if there is no tax data, the Exchange must discontinue advance payments of the premium tax credit and cost-sharing reductions at the end of the 90 day inconsistency period.

• Clarifies that the Exchange verify whether an applicant reasonably expects to be enrolled in employer-sponsored insurance the year for which he or she is seeking coverage, in addition to whether the applicant is currently enrolled.

Changes to § 155.330

• Allows the Exchange to establish a reasonable threshold for changes in income that an enrollee must report.

• Allows the Exchange to expand data matching during the benefit year within certain standards and without HHS approval.

• Adds procedures for notifying and redetermining an enrollee's eligibility upon obtaining data via data matches; outlines different procedures for data related to income, family size, or family composition and data not related to

income, family size, or family composition.

• Allows the Exchange to align eligibility effective dates for redeterminations with coverage effective dates in subpart E.

Changes to § 155.335

• Adds timing standard for annual redetermination notice and provides that the annual redetermination notice be combined with the annual notice of open enrollment into a single, coordinated notice in the first two years.

• Provides flexibility to States on timing of notice starting with redeterminations of coverage effective on or after January 1, 2017, and sets forth standards for such flexibility.

• Clarifies effective dates of annual redetermination.

• Adds that the Exchange is authorized to obtain tax data for a period of up to five years, unless the individual declines this authorization or chooses to authorize for a period of less than five years.

• Adds limitation to redetermination if an individual requests eligibility determination for insurance affordability programs but does not have an authorization for the Exchange to obtain tax data as part of annual redetermination process; Exchange must notify enrollee and not proceed with redetermination until authorization has been obtained or enrollee declines financial assistance.

Changes to § 155.340

• Replaces ''Social Security number'' with ''taxpayer identification number,'' in accordance with statute.

• Adds the standard that the Exchange must transmit promptly and without undue delay information to enable advance payments of the premium tax credits and cost-sharing reductions, and as described elsewhere in this rule, this provision is being published as interim.

Changes to § 155.345

• Adds standards for agreements between the Exchange and other insurance affordability programs, and as described elsewhere in this rule, this provision is being published as interim.

• Clarifies responsibilities of the Exchange when applicants are found potentially eligible for Medicaid based on factors other than MAGI which includes notifying the applicant; clarifies standards for providing advance payments of the premium tax credit and cost-sharing reductions to such individuals.

• Adds standards for the Exchange when accepting applications from other insurance affordability programs and sending applications to agencies administering other insurance affordability programs, and as described elsewhere in this rule, this provision is being published as interim.

• Adds a special rule providing that if the Exchange finds a tax filer's household income is less than 100 percent of the FPL and one or more applicant in the tax filer's household is found ineligible for Medicaid or CHIP, the Exchange follow the procedures in § 155.320(c)(3).

Changes to § 155.350

• Clarifies that an individual must be eligible for advance payments of the premium tax credit in order to be eligible for cost-sharing reductions, in accordance with statute.

• Clarifies that cost-sharing reductions use the same household income and FPL definitions as advance payments of the premium tax credit.

Changes to § 155.400

• Adds policy in § 155.400(b)(2) for Exchanges to submit eligibility and enrollment information to HHS and QHP issuers promptly and without undue delay.

• Removes policy from § 155.400(c) that the Exchange must submit enrollment information to HHS on a monthly basis.

• Adds policy in § 155.400(d) that the Exchange must reconcile enrollment information with HHS and QHP issuers on a monthly basis.

Changes to § 155.410

• Extends the initial open enrollment period from February 28, 2014 to March 31, 2014.

• Modifies the standards in this section such that an enrollment transaction must be received by the 15th of the month to secure an effective date of the first of the following month.

• Gives the Exchange flexibility to negotiate earlier effective dates and/or later plan selection cutoff dates, but notes that the Exchange must secure agreement from all participating QHP issuers. Further, an earlier effective date can only be offered to an individual who is not determined eligible for or forgoes advance payments of the premium tax credit/cost-sharing reductions for the first partial month of coverage.

• Gives the Exchange the option to automatically enroll individuals contingent upon demonstrating good cause to HHS.

Changes to § 155.420

• Aligns coverage effective dates for special enrollment periods with the new dates for the initial open enrollment periods as described in § 155.410, except in the case of marriage or loss of minimum essential coverage.

• Removes the limits on special enrollment periods formerly in § 155.420(f).

Changes to § 155.430

• Defines reasonable notice, for the purposes of effectuating a termination, as 14 days.

• Clarifies the effective dates of terminations for enrollees under various scenarios, including individuals newly eligible for Medicaid, or CHIP; and individuals receiving advance payments of the premium tax credit.

Changes to § 155.700

• Adds a definition for minimum participation rules.

Changes to § 155.705

• Permits the SHOP to impose minimum participation rules at the SHOP level.

• Adds a standard that the SHOP develop and offer a premium calculator.

Changes to § 155.715

• Clarifies that SHOPs may not use section 1411(b)(2) or 1411(c) verification processes for the SHOP eligibility determination process.

• Clarifies that for eligibility determination purposes, the SHOP may collect only the minimum information necessary to make such a determination.

Changes to § 155.720

• Adds a standard that the SHOP must report to the IRS employer participation and employee enrollment information in a form and manner specified by HHS.

Changes to § 155.725

• Adds a standard that the SHOP offer the same special enrollment periods as the individual Exchange, with the exception of changes in citizenship status or eligibility for insurance affordability programs.

• Clarifies that the annual election/open enrollment periods for employers/employees must be at least 30 days.

• Clarifies that the SHOP provide newly qualified employees with a specified enrollment period.

Changes to § 155.730

• Adds safeguards to protect information collected on application.

Changes to § 155.1010

• Clarifies that multi-State plans and CO–OPs are recognized as QHPs.

• Allows Exchanges to certify QHPs during the plan/benefit year if necessary.

Changes to § 155.1020

• Clarifies that multi-State plans are exempt from the Exchange process for receiving and considering rate increase justifications, and from the Exchange process for receiving annual rate and benefit information.

• Establishes that the Exchange must post rate increase justifications on its Web site.

Changes to § 155.1040

• Clarifies that multi-State plans must submit transparency data in a time and manner determined by the U.S. Office of Personnel Management.

Changes to § 155.1045

• Clarifies that the U.S. Office of Personnel Management will establish the accreditation timeline for multi-State plans.

Changes to § 155.1050

• Clarifies that the U.S. Office of Personnel Management will ensure compliance with network adequacy standards by multi-State plans.

• Clarifies that a QHP issuer in an Exchange may not be prohibited from contracting with any essential community provider designated under § 156.235(c).

Changes to § 155.1065

• Clarifies that stand-alone dental plans must meet most QHP certification standards, including § 155.1020(c) and that stand-alone dental plans must offer the pediatric dental essential health benefit without annual and lifetime limits as applied to the essential health benefits in section 1302(b) of the Affordable Care Act.

• Adds a standard for the Exchange to ensure sufficient access to pediatric dental coverage.

Changes to § 155.1075

• Exempts multi-State plans and CO–OPs from the Exchange recertification process.

Changes to § 155.1080

• Exempts multi-State plans and CO–OPs from the Exchange decertification process.

Changes to § 156.50

• Clarifies that participating issuers must remit user fees, as defined by an Exchange, and other assessments, if applicable, to a State-based or Federally-facilitated Exchange.

Changes to § 156.225

• Codifies the statutory prohibition against QHP benefit designs that have the effect of discouraging enrollment by higher-need individuals.

Changes to § 156.230

• Expands the proposed standard such that a QHP must maintain a network that is sufficient in number and types of providers, including providers that specialize in mental health and substance abuse, to assure that all services will be accessible without unreasonable delay.

Changes to § 156.235

• Sets minimum standards that a QHP must have a sufficient number and geographic distribution of essential community providers to ensure reasonable and timely access to a broad range such providers for low-income, medically underserved individuals in the QHP's service area.

• Clarifies the definition of essential community provider to include providers that met the criteria to be an essential community provider on the publication date of this regulation unless the provider lost its status as an essential community provider as a result of violating Federal law.

• Establishes an alternate standard for integrated delivery systems and staff model plans.

• Clarifies payment policy with respect to FQHCs and all other essential community providers.

Changes to § 156.255

• Removes provision related to covering specific rating categories or groups.

Changes to § 156.265

• Clarifies the role of the QHP issuer in the enrollment process for enrollment through the Exchange.

Changes to § 156.270

• Adds a standard that the QHP issuer must notify the affected individual 30 days in advance of a termination.

• Clarifies that for individuals receiving advance payments of the premium tax credit who are terminated for non-payment, the QHP issuer must pay all claims for the first month of the grace period. The issuer may pend claims during the second and third months, but must notify providers. Finally, the issuer must return to Treasury any advance payment of the premium tax credit for the second and third months at the conclusion of the grace period and effectuate termination of coverage at the end of the first month of the grace period.

Changes to § 156.280

• Codifies the pre-regulatory model guidelines on issuer segregation plans.

Changes to § 156.285

• Clarifies that QHP issuers must provide newly qualified employees with a specified enrollment period.

• Clarifies that QHP issuers participating in the SHOP may not set minimum participation rules for offering health coverage in connection with a QHP.

Changes to § 156.295

• Modifies definition of ''bona fide service fees.''

Changes to § 157.205

• Removes requirement for SHOP to continue coverage if employer fails to take action during election period.

V. Collection of Information Requirements

Paperwork Reduction Act

As noted above, this final rule incorporates provisions originally published as two proposed rules, the July 15, 2011 rule titled Establishment of Exchanges and Qualified Health Plans, and the August 17, 2011 rule titled Exchange Functions in the Individual Market: Eligibility Determinations and Exchange Standards for Employers. These proposed rules are referred to collectively as the Exchange establishment and eligibility proposed rules. In the Exchange establishment proposed rule published on July 15, 2011, we sought comment on certain information collection requirements associated with that proposed rule. We received one comment that stated a concern regarding the adequacy of the burden estimates stated in the Collection of Information Requirements section. We considered the commenter's concern and plan to issue more detail regarding the collection of information requirements in this rule.

In the Exchange establishment proposed rule, we explained that we would seek comments on the standards associated with § 155.105, which are finalized in this rule as the standards for the Exchange Blueprint. On November 10, 2011, we issued a 60-day **Federal Register** Notice seeking comments on a template for the Exchange Blueprint. For more information, please see page 70418 of Vol. 76, No. 218 of the **Federal Register**.

In the Exchange eligibility proposed rule published on August 17, 2011, we did not seek comment on the associated

information collection requirements. In accordance with the Paperwork Reduction Act (PRA), we will issue a **Federal Register** Notice in the coming weeks to seek public comments on these provisions.

In addition, this final rule includes certain regulatory provisions that differ from those included in the Exchange establishment proposed rule. Some of those provisions involve changes from the information collection requirements described in the Exchange establishment proposed rule. These changes include the following:

- Exchange up-to-date Internet Web site (§ 155.205);
- Standard for Exchanges to maintain records of enrollment (§ 155.400);
- Standard for Exchanges to submit eligibility and enrollment information to QHP issuers and HHS promptly and without undue delay and reconcile enrollment information with QHP issuers and HHS on at least a monthly basis (§ 155.400);
- Notice of eligibility to applicant (§ 155.405);
- Notice of annual open enrollment period to applicant (§ 155.410);
- Standard for Exchanges to maintain records of coverage terminations (§ 155.430);
- Notice to employers (§ 155.715);
- Notice to individual of inability to substantiate employee status (§ 155.715);
- Notice of employer eligibility (§ 155.715);
- Notice of employee eligibility (§ 155.715);
- Notice of employer withdrawal from SHOP (§ 155.715);
- Notice of effective date to employees (§ 155.720);
- Notice of employee termination of coverage to employer (§ 155.720);
- Standard for the SHOP to maintain records of enrollment (§ 155.720);
- Standard for the SHOP to reconcile enrollment information (§ 155.720);
- Notice of annual employer election period (§ 155.725);
- Notice to employee of open enrollment period (§ 155.725);
- Standard for Exchanges to collect QHP issuer reports on covered benefits, rates, and cost sharing requirements (§ 155.1020);
- Notice to the QHP issuer, enrollees, HHS, and the State insurance department of the decertification of a QHP (§ 155.1080);
- Issuer reporting of benefit and rate information (§ 156.210);
- Issuer reporting of rate increase justifications (§ 156.210);
- Issuer reporting of transparency in coverage information (§ 156.220);
- Standard for QHP issuers to make available enrollee cost sharing information (§ 156.220);
- Notice to applicants and enrollees that includes the provider directory (§ 156.230);
- Notice of effective date of coverage to individuals (§ 156.260);
- Standard for QHP issuers to collect enrollment information and submit the enrollment information to the Exchange (§ 156.265);
- Standard for QHP issuers to provide an enrollment package to enrollee (§ 156.265);
- Summary of cost and coverage document(§ 156.265);
- Standard for QHP issuers to reconcile enrollment information with the Exchange (§ 156.265);
- Notice to the enrollee of the termination of coverage (§ 156.270);
- Notice to the enrollee of payment delinquency (§ 156.270);
- Standard for QHP issuers to maintain records of coverage terminations (§ 156.270);
- Standard for QHP issuers to provide enrollment information package to SHOP enrollees (§ 156.285);
- Summary of cost and coverage document for employees and employers (§ 156.285);
- Standard for QHP issuers to reconcile enrollment information with the SHOP (§ 156.285);
- Notice to SHOP enrollee of the termination of coverage (§ 156.285);
- Notice of QHP issuer non-renewal of certification to Exchange (§ 156.290);
- Notice of QHP issuer non-renewal of certification to enrollees (§ 156.290); and
- Standard for QHP issuers to submit prescription drug distribution and cost reporting (§ 156.295);

This final rule also includes some information collection requirements for which we did not seek comment in the Exchange establishment proposed rule. In accordance with the Paperwork Reduction Act (PRA), we will issue a **Federal Register** Notice in the coming weeks to seek public comments on these provisions.

Finally, this final rule describes some information collections for which CMS plans to seek approval at a later date. For these information collections, CMS will issue future **Federal Register** notices to seek comments on those information collections, as required by the PRA. This includes, among other collections:

- Navigator standards (§ 155.210);
- Single streamlined application to determine eligibility and collect information for enrollment (§ 155.405);
- SHOP single employer application (§ 155.715);
- SHOP single employee application (§ 155.715);
- Alternative employer application (§ 155.730);
- Collection of rates, covered benefits, and cost sharing information (§ 155.200);
- Collection of transparency of coverage information (§ 155.1040);
- Evaluation of service area (§ 155.1055);
- Standards for the certification of stand-alone dental plans (§ 155.1065);
- Submission of rates, covered benefits, and cost sharing information (§ 156.210); and
- Submission of transparency of coverage information (§ 156.220).

VI. Summary of Regulatory Impact Analysis

The summary analysis of benefits and costs included in this rule is drawn from the detailed Regulatory Impact Analysis. That impact analysis evaluates the impacts of this rule and a second rule, ''Patient Protection and Affordable Care Act; Standards Related to Reinsurance, Risk Corridors and Risk Adjustment.'' The second final rule will be published separately. The following summary focuses on the benefits and costs of this final rule.

A. Introduction

HHS has examined the impacts of this final rule under Executive Orders 12866 and 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and the Executive Order 13132 on Federalism. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits (both quantitative and qualitative) of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated an ''economically'' significant rule, under section 3(f)(1) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Using the Small Business Administration (SBA) definitions of small entities for issuers, agents and brokers, and employers, HHS concludes

that a significant number of firms affected by this final rule are not small businesses.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before promulgating ''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 approximately $136 million, using the most current (2011) Implicit Price Deflator for the Gross Domestic Product. HHS does not expect this final rule to result in one-year expenditures that would meet or exceed this amount.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct costs on State and local governments, preempts State law, or otherwise has Federalism implications. Specifically, an agency must act in strict accordance with the governing law, consult with State officials, and address their concerns.

B. Need for This Regulation

This final rule implements standards related to the Establishment of Exchanges and Qualified Health Plans and standards for Qualified Employers consistent with the Affordable Care Act. The Exchanges will provide competitive marketplaces for individuals and small employers to directly compare available private health insurance options on the basis of price, quality, and other factors. The Exchanges, which will become operational by January 1, 2014, will help enhance competition in the health insurance market, improve choice of affordable health insurance, and give small business the same purchasing power as large businesses.

C. Summary of Costs and Benefits of the Regulation

This summary focuses on the benefits and costs of the requirements in this Exchange final rule that combines the policies in the Exchange establishment proposed rule and the Exchange eligibility proposed rule.

Benefits in Response to the Regulation

The Exchanges and their associated policies, according to CBO's letter to Evan Bayh from November 30, 2009, reduce premiums for the same benefits compared to prior law. CBO estimated that, in 2016, people purchasing non-group coverage through the Exchanges would pay 7 to 10 percent less due to the healthier risk pool that results from the coverage expansion. An additional 7 to 10 percent in savings would result from gains in economies of scale in purchasing insurance and lower administrative costs from elimination of underwriting, decreased marketing costs, and the Exchanges' simpler system for finding and enrolling individuals in health insurance plans.[17]

CBO also estimates that premiums for small businesses purchasing through the Exchanges would be up to 2 percent lower than they would be without the Affordable Care Act, for comparable reasons. CBO estimated that the administrative costs to health plans (described in greater detail below) would be more than offset by savings resulting from lower overhead due to new policies to limit benefit variation, and end underwriting. Premium savings to individuals and small businesses allow for alternative uses of income and resources, such as increasing retirement savings for families or investing in new jobs for small businesses.

Simplified eligibility processes will increase take-up of health insurance leading to improved health. In a recent study, compared to the uninsured group, the insured received more hospital care, more outpatient care, had lower medical debt, better self-reported health, and other health related benefits. The evaluation concluded that for low-income uninsured adults, coverage has the following benefits: (1) Significantly higher utilization of preventive care (mammograms, cholesterol monitoring, blood tests for high blood sugar related to diabetes, etc.); (2) a significant increase in the probability of having a regular office or clinic for primary care; and, (3) significantly better self-reported health. In addition, the use of electronic records among State and Federal agencies with information to verify eligibility will minimize the transaction costs associated with purchasing health insurance improving market efficiency and minimizing time cost for enrollees on enrollment.

Costs in Response to the Regulation

Meeting the requirements of this rule will have costs affecting Exchanges and issuers of qualified health plans (QHPs). The administrative costs of operating an Exchange will almost certainly vary by the number of enrollees in the Exchange due to economies of scale, variation in the scope of the Exchange's activities, and variation in average premium in the Exchange service areas. However, we believe major cost components for Exchanges will include: IT infrastructure, Navigators, notifications, enrollment standards, application process, SHOP, certification of QHPs, and quality reporting. The major costs on issuers of QHPs will include: accreditation, network adequacy standards, and quality improvement strategy reporting. CBO estimates that the administrative costs to QHP issuers would be more than offset by savings resulting from lower overhead due to new policies to limit benefit variation, prohibit ''riders,'' and end under-writing.

To support the new eligibility structure, States are expected to build new or modify existing information technology systems. How each State constructs and assembles the components necessary to support its Exchange and Medicaid infrastructure will vary and depend on the level of maturity of current systems, current governance and business models, size, and other factors. Administrative costs to support the vision for a streamlined and coordinated eligibility and enrollment process will also vary for each State depending on the specific approaches taken regarding the integration between programs and its decision to build a new system or use existing systems; while the Affordable Care Act requires a high level of integration, States have the option to go beyond the requirements of the Act.

We also believe that overall administrative costs may increase in the short term as States build information technology systems; however, in the long-term States will see savings through the use of more efficient systems. As noted in the preamble, we believe the approach we are taking to supporting the verification of applicant information with SSA, IRS, and DHS reduces administrative complexity and associated costs. Administrative costs to States incurred in the development of information technology infrastructure to support the Exchange are funded wholly through State Exchange Planning and Establishment Grants. Costs for information technology infrastructure that will also support Medicaid must be allocated to Medicaid, but are eligible for a time-limited 90 percent Federal matching rate to assist in development.

Methods of Analysis

This impact analysis references both estimates from the Congressional Budget Office (CBO), as well as Center for

[17] Congressional Budget Office, ''Letter to the Honorable Evan Bayh: An Analysis of Health Insurance Premiums Under the Patient Protection and Affordable Care Act '' (Washington, 2009).

Medicare & Medicaid Services (CMS) estimates from the FY 2013 President's Budget. The CBO estimate remains the most comprehensive accounting of all the interacting provisions pertaining to the Affordable Care Act, and contains cost estimates of some provisions that have not been independently estimated by CMS. Based on our review, we expect that the requirements in these final rules will not significantly alter CBO's estimates of the budget impact of Exchanges or enrollment. The requirements are well within the parameters used in the modeling of the Affordable Care Act. Our review and analysis of the requirements indicate that the impacts are within the model's margin of error. In the regulatory impact analysis that accompanied the proposed Exchange establishment rule, we displayed CBO estimates of Exchange grant outlays. The estimates in this analysis reflect the most up-to-date estimates from the FY 2013 President's Budget for State Planning and Establishment Grants.

Table 1 includes the estimates of grants to States for Exchange start up from 2012 to 2016. It does not include costs related to reduced Federal revenues from refundable premium tax credits, which are administered by the Department of the Treasury subject to IRS rulemaking, the Medicaid effects, which are subject to separate rulemaking, or the policies whose offsets led CBO to estimate that the Affordable Care Act would reduce the Federal budget deficit by over $100 billion over the next 10 years. As this is a summary of the final impact analysis, for further information on the expected benefits and costs of this rule, please see the final regulatory impact analysis.

TABLE 1—ESTIMATED OUTLAYS FOR THE AFFORDABLE INSURANCE EXCHANGES FY 2012–FY2016

[In billions of dollars]

Year	2012	2013	2014	2015	2016	2012–2016
Grant Authority for Exchange Start up [a]	0.9	1.1	0.8	0.4	0.1	3.4

[a] FY 2013 President's Budget, *Analytical Perspectives,* Table 32–1.

Regulatory Options Considered

In addition to a baseline, HHS has identified three regulatory options for this final rule as required by Executive Order 12866 for Exchange establishment and eligibility.

(1) Uniform Standard for Operations of an Exchange. Under this alternative HHS would require a single standard for State operations of Exchanges. The regulation offers States the choice of whether to establish an Exchange, how to structure governance of the Exchange, whether to join with other States to form a regional Exchange, and how much education and outreach to engage in, among other factors. This alternative model would restrict State flexibility, requiring a more uniform standard that States must enact in order to achieve approval of an Exchange.

(2) Uniform Standard for Health Insurance Coverage. Under this alternative, there would be a single uniform standard for certifying QHPs. QHPs would need to meet a single standard in terms of benefit packages, network adequacy, premiums, etc. HHS would set these standards in advance of the certification process and QHPs would either meet those standards and thereby be certified or would fail to meet those standards and therefore would not be available to enrollees.

(3) Require a Paper-Driven Process for Conducting Eligibility Determinations. In this final rule, to verify applicant information used to support an eligibility determination, we generally require the Exchange first use electronic data, where available, prior to requesting paper documentation. Under this rule, individuals will be asked to provide only the minimum amount of information necessary to complete an eligibility determination, and will only be required to submit paper if electronic data cannot be used to complete the verification process. Under this alternative, the Exchange would require individuals to submit paper documentation to verify information necessary for an eligibility determination. This would not only increase the amount of burden placed on individuals to identify and collect this information, which may not be readily available to the applicant, but would also necessitate additional time and resources for Exchanges to accept and verify the paper documentation needed for an eligibility determination.

Summary of Costs for Each Option

HHS notes that Option 1, which promotes uniformity, could produce a benefit of reduced Federal oversight cost; however this option would reduce innovation and therefore limit diffusion of successful policies and furthermore interfere with Exchange functions and needs. HHS also notes that while Option 2 could produce administrative burdens on Exchanges, this approach could reduce Exchanges' and QHP issuers' ability to innovate. These costs and benefits are discussed more fully in the detailed Regulatory Impact Analysis.

The paper-driven process in option 3 would ultimately increase the amount of time it would take for an individual to receive health coverage, would reduce the number of States likely to operate an Exchange due to increased administrative costs, and would dissuade individuals from seeking coverage through the Exchange. We believe using technology to minimize burden on individuals and States will help increase access to coverage by streamlining the eligibility process, and will reduce administrative burden on Exchanges, while increasing accuracy by relying on trusted data for eligibility.

VIII. Accounting Statement

Category	Estimates			Units		
	Primary estimate	Low estimate	High estimate	Year dollar	Discount rate	Period covered
Benefits						
Annualized Monetized ($millions/year).	Not Estimated	$	$	2011	7%	2012–2016
	Not Estimated	$	$	2011	3%	2012–2016
Qualitative	The Exchanges, combined with other actions being taken to implement the Affordable Care Act, will improve access to health insurance, with numerous positive effects, including earlier treatment and improved morbidity, fewer bankruptcies and decreased use of uncompensated care. The Exchange will also serve as a distribution channel for insurance reducing administrative costs as a part of premiums and providing comparable information on health plans to allow for a more efficient shopping experience.					
Costs						
Annualized Monetized ($millions/year).	$690.55	Not Estimated	Not Estimated	2011	7%	2012–2016
	$673.50	Not Estimated	Not Estimated	2011	3%	2012–2016
Qualitative	These costs include grant outlays to States to establish Exchanges.					
Transfers						
Federal Annualized Monetized ($millions/year).	0	$	$	2011	7%	2012–2016
	0	$0.00	$0.00	2011	3%	2012–2016
From/To	From:			To:		
Other Annualized Monetized ($millions/year).	0.0	0.0	0.0.			
	0.0	0.0	0.0.			
From/To	From:			To:		

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires agencies to prepare an regulatory flexibility analysis to describe the impact of the final rule on small entities, unless the head of the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. The Act generally defines a ''small entity'' as (1) A proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a not-for-profit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000. States and individuals are not included in the definition of ''small entity.'' HHS uses as its measure of significant economic impact on a substantial number of small entities a change in revenues of more than 3 to 5 percent.

As discussed above, this final rule is necessary to implement standards related to the Establishment of Exchanges and Qualified Health Plans as authorized by the Affordable Care Act. For purpose of the Regulatory Flexibility Analysis, we expect the following types of entities to be affected by this final rule: (1) QHP issuers; (2) agents and brokers; (3) employers. We believe that health insurers and agents and brokers would be classified under the North American Industry Classification System (NAICS) Codes 524114 (Direct Health and Medical Insurance Carriers) and 524210 (Insurance Agencies and Brokers). According to SBA size standards, entities with average annual receipts of $7 million or less would be considered small entities for both of these NAICS codes. Health issuers could possibly be classified in 621491 (HMO Medical Centers) and, if this is the case, the SBA size standard would be $10 million or less.

As discussed in the Web Portal interim final rule (75 FR 24481), HHS examined the health insurance industry in depth in the Regulatory Impact Analysis we prepared for the proposed rule on establishment of the Medicare Advantage program (69 FR 46866, August 3, 2004). In that analysis we determined that there were few, if any, insurance firms underwriting comprehensive health insurance policies (in contrast, for example, to travel insurance policies or dental discount policies) that fell below the size thresholds for ''small'' business established by the SBA (currently $7 million in annual receipts for health insurers, based on North American Industry Classification System Code 524114).[18]

Additionally, as discussed in the Medical Loss Ratio interim final rule (75 FR 74918), the Department used a data set created from 2009 National Association of Insurance Commissioners (NAIC) Health and Life Blank annual financial statement data to develop an updated estimate of the number of small entities that offer comprehensive major medical coverage in the individual and group markets. For purposes of that analysis, the Department used total Accident and Health (A&H) earned premiums as a proxy for annual receipts. The Department estimated that there were 28 small entities with less than $7 million in accident and health earned premiums offering individual or group comprehensive major medical

[18] ''Table of Size Standards Matched To North American Industry Classification System Codes,'' effective November 5, 2010, U.S. Small Business Administration, available at *http://www.sba.gov.*

coverage; however, this estimate may overstate the actual number of small health insurance issuers offering such coverage, since it does not include receipts from these companies' other lines of business.

This rule finalizes Exchange standards related to offering the QHPs. These standards and the associated certification process will impose costs on issuers, but these costs will vary depending on a number of factors, including the operating model chosen by the Exchange, their current accreditation status, and the variation between these standards and current practice. Some QHP issuers will be more prepared to meet the standards than others and will incur fewer costs. For example, if data reporting functions required for certification already exist at the QHP issuer, there would be no additional cost. Exchanges also have the flexibility in some cases to set requirements. For example, the rule provides discretion for Exchanges in setting network adequacy standards for participating health insurance issuers. The cost to the issuer will depend on whether the Exchange determines that compliance with relevant State law and licensure requirements is sufficient for a QHP issuer to participate in the Exchange or whether they decide to set additional standards in accordance with current provider market characteristics and consumer needs.

The cost of participating in an Exchange is an investment for QHP issuers, with benefits expected to accrue to QHP issuers. The Exchange will function as an important distribution channel for QHPs. QHP issuers currently fund their own sales and marketing efforts. As a centralized outlet to attract and enroll consumers, the Exchanges will supplement and reduce incremental health plan sales and marketing costs with their consumer assistance, education and outreach functions.

We anticipate that the agent and broker industry, which is comprised of large brokerage organizations, small groups, and independent agents, will play a critical role in enrolling qualified individuals in QHPs. We are codifying section 1312(e) of the Affordable Care Act, which gives States the option to permit agents or brokers to assist individuals in enrolling in QHPs through the Exchange. If a State chooses to allow agents and brokers to assist individuals in enrolling in QHPs through the Exchange, we establish standards that would apply for such enrollment. Agents and brokers must meet these standards and any conditions imposed by the State and, as a result, could incur costs. In addition, agents and brokers who become Navigators will also agree to comply with associated requirements and are likely to incur some costs. Because the States and the Exchanges will make these determinations, we cannot provide an estimate of the potential number of small entities that will be affected or the costs associated with these decisions.

This final rule establishes requirements on employers that choose to participate in a SHOP. As discussed above, the SHOP is limited by statute to employers with at least one but not more than 100 employees. For this reason, we expect that many employers would meet the SBA Standard for Small entities. We do not believe that the regulation imposes requirements on employers offering health insurance through SHOP that are more restrictive than the current requirements on employers offering employer sponsored health insurance. For this reason, we also believe the processes that we have established constitute the minimum amount of requirements necessary to implement statutory mandates and accomplish our policy goals, and that no appropriate regulatory alternatives could be developed to lessen the compliance burden. We also expect that for some employers, risk pooling and economies of scale will reduce the administrative cost of offering coverage through the SHOP and that they will, therefore, benefit from participation.

VIII. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2011, that threshold is approximately $136 million. Because States are not required to set up an Exchange, and because grants are available for funding of the establishment of an Exchange by a State, we anticipate that this final rule would not impose costs above that $136 million UMRA threshold on State, local, or tribal governments.

IX. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct costs on State and local governments, pre-empts State law, or otherwise has Federalism implications. Because States have flexibility in designing their Exchange, State decisions will ultimately influence both administrative expenses and overall premiums. States are not required to establish an approved Exchange. For States electing to create an Exchange, much of the initial costs to the creation of Exchanges will be funded by Exchange Planning and Establishment Grants. After this time, Exchanges will be financially self-sustaining with revenue sources at the discretion of the State. Current State Exchanges charge user fees to issuers.

In the Department's view, while this final rule does not impose substantial direct requirement costs on State and local governments, this regulation has Federalism implications due to direct effects on the distribution of power and responsibilities among the State and Federal governments relating to determining standards relating to health insurance coverage (that is, for QHPs) that is offered in the individual and small group markets. Each State electing to establish an Exchange must adopt the Federal standards contained in the Affordable Care Act and in this final rule, or have in effect a State law or regulation that implements these Federal standards. However, the Department anticipates that the Federalism implications (if any) are substantially mitigated because under the statute, States have choices regarding the structure and governance of their Exchanges. Additionally, the Affordable Care Act does not require States to establish an Exchange; if a State elects not to establish an Exchange or the State's Exchange is not approved, HHS, either directly or through agreement with a non-profit entity, must establish and operate an Exchange in that State.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have Federalism implications or limit the policy making discretion of the States, the Department has engaged in efforts to consult with and work cooperatively with affected States, including participating in conference calls with and attending conferences of the National Association of Insurance Commissioners, and consulting with State insurance officials on an individual basis.

Throughout the process of developing this rule, the Department has attempted to balance the States' interests in regulating health insurance issuers, and Congress' intent to provide access to Affordable Insurance Exchanges for consumers in every State. By doing so, it is the Department's view that we have

complied with the requirements of Executive Order 13132.

Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to this regulation, the Department certifies that CMS has complied with the requirements of Executive Order 13132 for the attached regulation in a meaningful and timely manner.

List of Subjects

45 CFR Part 155

Administrative practice and procedure, Advertising, Brokers, Conflict of interest, Consumer protection, Grant programs-health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Loan programs-health, Organization and functions (Government agencies), Medicaid, Public assistance programs, Reporting and recordkeeping requirements, Safety, State and local governments, Technical assistance, Women, and Youth.

45 CFR Part 156

Administrative practice and procedure, Advertising, Advisory committees, Brokers, Conflict of interest, Consumer protection, Grant programs-health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Loan programs-health, Organization and functions (Government agencies), Medicaid, Public assistance programs, Reporting and recordkeeping requirements, Safety, State and local governments, Sunshine Act, Technical Assistance, Women, and Youth.

45 CFR Part 157

Employee benefit plans, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, Indians, Individuals with disabilities, Organization and functions (Government agencies), Medicaid, Public assistance programs, Reporting and recordkeeping requirements, Safety, State and local governments, Sunshine Act, Technical Assistance, Women, and Youth.

For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR subtitle A, subchapter B, as set forth below:

Subchapter B—Requirements Relating to Health Care Access

PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT

■ 1. The authority citation for part 155 is revised to read as follows:

Authority: Title I of the Affordable Care Act, sections 1301, 1302, 1303, 1304, 1311, 1312, 1313, 1321, 1322, 1331, 1334, 1402, 1411, 1412, 1413.

■ 2. Revise the part 155 heading to read as set forth above.

■ 3. Add subparts A through E to read as follows:

Subpart A—General Provisions

Sec.
155.10 Basis and scope.
155.20 Definitions.

Subpart B—General Standards Related to the Establishment of an Exchange

155.100 Establishment of a State Exchange.
155.105 Approval of a State Exchange.
155.106 Election to operate an Exchange after 2014.
155.110 Entities eligible to carry out Exchange functions.
155.120 Non-interference with Federal law and non-discrimination standards.
155.130 Stakeholder consultation.
155.140 Establishment of a regional Exchange or subsidiary Exchange.
155.150 Transition process for existing State health insurance exchanges.
155.160 Financial support for continued operations.

Subpart C—General Functions of an Exchange

155.200 Functions of an Exchange.
155.205 Consumer assistance tools and programs of an Exchange.
155.210 Navigator program standards.
155.220 Ability of States to permit agents and brokers to assist qualified individuals, qualified employers, or qualified employees enrolling in QHPs.
155.230 General standards for Exchange notices.
155.240 Payment of premiums.
155.260 Privacy and security of personally identifiable information.
155.270 Use of standards and protocols for electronic transactions.

Subpart D—Exchange Functions in the Individual Market: Eligibility Determinations for Exchange Participation and Insurance Affordability Programs

155.300 Definitions and general standards for eligibility determinations.
155.302 Options for conducting eligibility determinations.
155.305 Eligibility standards.
155.310 Eligibility process.
155.315 Verification process related to eligibility for enrollment in a QHP through the Exchange.
155.320 Verification process related to eligibility for insurance affordability programs.
155.330 Eligibility redetermination during the benefit year.
155.335 Annual eligibility redetermination.
155.340 Administration of advance payments of the premium tax credit and cost-sharing reductions.
155.345 Coordination with Medicaid, CHIP, the Basic Health Program, and the Pre-existing Condition Insurance Plan.
155.350 Special eligibility standards and process for Indians.
155.355 Right to appeal.

Subpart E—Exchange Functions in the Individual Market: Enrollment in Qualified Health Plans

155.400 Enrollment of qualified individuals into QHPs.
155.405 Single streamlined application.
155.410 Initial and annual open enrollment periods.
155.420 Special enrollment periods.
155.430 Termination of coverage.

Subpart A—General Provisions.

§ 155.10 Basis and scope.

(a) *Basis.* This part is based on the following sections of title I of the Affordable Care Act:

(1) 1301. Qualified health plan defined

(2) 1302. Essential health benefits requirements

(3) 1303. Special rules

(4) 1304. Related definitions

(5) 1311. Affordable choices of health benefit plans.

(6) 1312. Consumer choice

(7) 1313. Financial integrity.

(8) 1321. State flexibility in operation and enforcement of Exchanges and related requirements.

(9) 1322. Federal program to assist establishment and operation of nonprofit, member-run health insurance issuers.

(10) 1331. State flexibility to establish Basic Health Programs for low-income individuals not eligible for Medicaid.

(11) 1334. Multi-State plans.

(12) 1402. Reduced cost-sharing for individuals enrolling in QHPs.

(13) 1411. Procedures for determining eligibility for Exchange participation, advance premium tax credits and reduced cost sharing, and individual responsibility exemptions.

(14) 1412. Advance determination and payment of premium tax credits and cost-sharing reductions.

(15) 1413. Streamlining of procedures for enrollment through an exchange and State Medicaid, CHIP, and health subsidy programs.

(b) *Scope.* This part establishes minimum standards for the establishment of an Exchange, minimum Exchange functions, eligibility determinations, enrollment periods, minimum SHOP functions,

certification of QHPs, and health plan quality improvement.

§ 155.20 Definitions.

The following definitions apply to this part:

Advance payments of the premium tax credit means payment of the tax credits specified in section 36B of the Code (as added by section 1401 of the Affordable Care Act) which are provided on an advance basis to an eligible individual enrolled in a QHP through an Exchange in accordance with sections 1402 and 1412 of the Affordable Care Act.

Affordable Care Act means the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152).

Agent or broker means a person or entity licensed by the State as an agent, broker or insurance producer.

Annual open enrollment period means the period each year during which a qualified individual may enroll or change coverage in a QHP through the Exchange.

Applicant means:

(1) An individual who is seeking eligibility for him or herself through an application submitted to the Exchange or transmitted to the Exchange by an agency administering an insurance affordability program for at least one of the following:

(i) Enrollment in a QHP through the Exchange; or

(ii) Medicaid, CHIP, and the BHP, if applicable.

(2) An employer or employee seeking eligibility for enrollment in a QHP through the SHOP, where applicable.

Application filer means an applicant, an adult who is in the applicant's household, as defined in 42 CFR 435.603(f), or family, as defined in section 36B(d)(1) of the Code, an authorized representative, or if the applicant is a minor or incapacitated, someone acting responsibly for an applicant.

Benefit year means a calendar year for which a health plan provides coverage for health benefits.

Code means the Internal Revenue Code of 1986.

Cost sharing means any expenditure required by or on behalf of an enrollee with respect to essential health benefits; such term includes deductibles, coinsurance, copayments, or similar charges, but excludes premiums, balance billing amounts for non-network providers, and spending for non-covered services.

Cost-sharing reductions means reductions in cost sharing for an eligible individual enrolled in a silver level plan in the Exchange or for an individual who is an Indian enrolled in a QHP in the Exchange.

Educated health care consumer has the meaning given the term in section 1304(e) of the Affordable Care Act.

Eligible employer-sponsored plan has the meaning given the term in section 5000A(f)(2) of the Code.

Employee has the meaning given to the term in section 2791 of the PHS Act.

Employer has the meaning given to the term in section 2791 of the PHS Act, except that such term includes employers with one or more employees. All persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Code are treated as one employer.

Employer contributions means any financial contributions towards an employer sponsored health plan, or other eligible employer-sponsored benefit made by the employer including those made by salary reduction agreement that is excluded from gross income.

Enrollee means a qualified individual or qualified employee enrolled in a QHP.

Exchange means a governmental agency or non-profit entity that meets the applicable standards of this part and makes QHPs available to qualified individuals and qualified employers. Unless otherwise identified, this term refers to State Exchanges, regional Exchanges, subsidiary Exchanges, and a Federally-facilitated Exchange.

Exchange Blueprint means information submitted by a State, an Exchange, or a regional Exchange that sets forth how an Exchange established by a State or a regional Exchange meets the Exchange approval standards established in § 155.105(b) and demonstrates operational readiness of an Exchange as described in § 155.105(c)(2).

Exchange service area means the area in which the Exchange is certified to operate, in accordance with the standards specified in subpart B of this part.

Grandfathered health plan has the meaning given the term in § 147.140.

Group health plan has the meaning given to the term in § 144.103.

Health insurance issuer or *issuer* has the meaning given to the term in § 144.103.

Health insurance coverage has the meaning given to the term in § 144.103.

Health plan has the meaning given to the term in section 1301(b)(1) of the Affordable Care Act.

Individual market has the meaning given the term in section 1304(a)(2) of the Affordable Care Act.

Initial open enrollment period means the period during which a qualified individual may enroll in coverage through the Exchange for coverage during the 2014 benefit year.

Large employer means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 101 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year. In the case of plan years beginning before January 1, 2016, a State may elect to define large employer by substituting ''51 employees'' for ''101 employees.''

Lawfully present has the meaning given the term in § 152.2.

Minimum essential coverage has the meaning given in section 5000A(f) of the Code.

Navigator means a private or public entity or individual that is qualified, and licensed, if appropriate, to engage in the activities and meet the standards described in § 155.210.

Plan year means a consecutive 12 month period during which a health plan provides coverage for health benefits. A plan year may be a calendar year or otherwise.

Plain language has the meaning given to the term in section 1311(e)(3)(B) of the Affordable Care Act.

Qualified employee means an individual employed by a qualified employer who has been offered health insurance coverage by such qualified employer through the SHOP.

Qualified employer means a small employer that elects to make, at a minimum, all full-time employees of such employer eligible for one or more QHPs in the small group market offered through a SHOP. Beginning in 2017, if a State allows large employers to purchase coverage through the SHOP, the term ''qualified employer'' shall include a large employer that elects to make all full-time employees of such employer eligible for one or more QHPs in the large group market offered through the SHOP.

Qualified health plan or *QHP* means a health plan that has in effect a certification that it meets the standards described in subpart C of part 156 issued or recognized by each Exchange through which such plan is offered in accordance with the process described in subpart K of part 155.

Qualified health plan issuer or *QHP issuer* means a health insurance issuer that offers a QHP in accordance with a certification from an Exchange.

Qualified individual means, with respect to an Exchange, an individual who has been determined eligible to enroll through the Exchange in a QHP in the individual market.

SHOP means a Small Business Health Options Program operated by an Exchange through which a qualified employer can provide its employees and their dependents with access to one or more QHPs.

Small employer means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 1 but not more than 100 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year. In the case of plan years beginning before January 1, 2016, a State may elect to define small employer by substituting ''50 employees'' for ''100 employees.''

Small group market has the meaning given to the term in section 1304(a)(3) of the Affordable Care Act.

Special enrollment period means a period during which a qualified individual or enrollee who experiences certain qualifying events may enroll in, or change enrollment in, a QHP through the Exchange outside of the initial and annual open enrollment periods.

State means each of the 50 States and the District of Columbia.

Subpart B—General Standards Related to the Establishment of an Exchange

§ 155.100 Establishment of a State Exchange.

(a) *General requirements.* Each State may elect to establish an Exchange that facilitates the purchase of health insurance coverage in QHPs and provides for the establishment of a SHOP.

(b) *Eligible Exchange entities.* The Exchange must be a governmental agency or non-profit entity established by a State, consistent with § 155.110.

§ 155.105 Approval of a State Exchange.

(a) *State Exchange approval requirement.* Each State Exchange must be approved by HHS by no later than January 1, 2013 to offer QHPs on January 1, 2014, and thereafter required in accordance with § 155.106. HHS may consult with other Federal Government agencies in determining whether to approve an Exchange.

(b) *State Exchange approval standards.* HHS will approve the operation of an Exchange established by a State provided that it meets the following standards:

(1) The Exchange is able to carry out the required functions of an Exchange consistent with subparts C, D, E, H, and K of this part;

(2) The Exchange is capable of carrying out the information reporting requirements in accordance with section 36B of the Code;

(3) The entire geographic area of the State is in the service area of an Exchange, or multiple Exchanges consistent with § 155.140(b).

(c) *State Exchange approval process.* In order to have its Exchange approved, a State must:

(1) Elect to establish an Exchange by submitting, in a form and manner specified by HHS, an Exchange Blueprint that sets forth how the Exchange meets the standards outlined in paragraph (b) of this section; and

(2) Demonstrate operational readiness to execute its Exchange Blueprint through a readiness assessment conducted by HHS.

(d) *State Exchange approval.* Each Exchange must receive written approval or conditional approval of its Exchange Blueprint and its performance under the operational readiness assessment consistent with paragraph (c) of this section in order to be considered an approved Exchange.

(e) *Significant changes to Exchange Blueprint.* The State must notify HHS in writing before making a significant change to its Exchange Blueprint; no significant change to an Exchange Blueprint may be effective until it is approved by HHS in writing or 60 days after HHS receipt of a completed request. For good cause, HHS may extend the review period by an additional 30 days to a total of 90 days. HHS may deny a request for a significant change to an Exchange Blueprint within the review period.

(f) *HHS operation of an Exchange.* If a State is not an electing State under § 155.100(a) or an electing State does not have an approved or conditionally approved Exchange by January 1, 2013, HHS must (directly or through agreement with a not-for-profit entity) establish and operate such Exchange within the State. In the case of a Federally-facilitated Exchange, the requirements in § 155.130 and subparts C, D, E, H, and K of this part will apply.

§ 155.106 Election to operate an Exchange after 2014.

(a) *Election to operate an Exchange after 2014.* A State electing to seek approval of its Exchange later than January 1, 2013 must:

(1) Comply with the State Exchange approval requirements and process set forth in § 155.105;

(2) Have in effect an approved, or conditionally approved, Exchange Blueprint and operational readiness assessment at least 12 months prior to the Exchange's first effective date of coverage; and

(3) Develop a plan jointly with HHS to facilitate the transition from a Federally-facilitated Exchange to a State Exchange.

(b) *Transition process for State Exchanges that cease operations.* A State that ceases operations of its Exchange after January 1, 2014 must:

(1) Notify HHS that it will no longer operate an Exchange at least 12 months prior to ceasing operations; and

(2) Coordinate with HHS on a transition plan to be developed jointly between HHS and the State.

§ 155.110 Entities eligible to carry out Exchange functions.

(a) *Eligible contracting entities.* The State may elect to authorize an Exchange established by the State to enter into an agreement with an eligible entity to carry out one or more responsibilities of the Exchange. Eligible entities are:

(1) An entity:

(i) Incorporated under, and subject to the laws of, one or more States;

(ii) That has demonstrated experience on a State or regional basis in the individual and small group health insurance markets and in benefits coverage; and

(iii) Is not a health insurance issuer or treated as a health insurance issuer under subsection (a) or (b) of section 52 of the Code of 1986 as a member of the same controlled group of corporations (or under common control with) as a health insurance issuer; or

(2) The State Medicaid agency, or any other State agency that meets the qualifications of paragraph (a)(1) of this section.

(b) *Responsibility.* To the extent that an Exchange establishes such agreements, the Exchange remains responsible for ensuring that all Federal requirements related to contracted functions are met.

(c) *Governing board structure.* If the Exchange is an independent State agency or a non-profit entity established by the State, the State must ensure that the Exchange has in place a clearly-defined governing board that:

(1) Is administered under a formal, publicly-adopted operating charter or by-laws;

(2) Holds regular public governing board meetings that are announced in advance;

(3) Represents consumer interests by ensuring that overall governing board membership:

(i) Includes at least one voting member who is a consumer representative;

(ii) Is not made up of a majority of voting representatives with a conflict of interest, including representatives of health insurance issuers or agents or brokers, or any other individual licensed to sell health insurance; and

(4) Ensures that a majority of the voting members on its governing board have relevant experience in health benefits administration, health care finance, health plan purchasing, health care delivery system administration, public health, or health policy issues related to the small group and individual markets and the uninsured.

(d) *Governance principles.* (1) The Exchange must have in place and make publicly available a set of guiding governance principles that include ethics, conflict of interest standards, accountability and transparency standards, and disclosure of financial interest.

(2) The Exchange must implement procedures for disclosure of financial interests by members of the Exchange board or governance structure.

(e) *SHOP independent governance.* (1) A State may elect to create an independent governance and administrative structure for the SHOP, consistent with this section, if the State ensures that the SHOP coordinates and shares relevant information with the Exchange operating in the same service area.

(2) If a State chooses to operate its Exchange and SHOP under a single governance or administrative structure, it must ensure that the Exchange has adequate resources to assist individuals and small employers in the Exchange.

(f) *HHS review.* HHS may periodically review the accountability structure and governance principles of a State Exchange.

§ 155.120 Non-interference with Federal law and non-discrimination standards.

(a) *Non-interference with Federal law.* An Exchange must not establish rules that conflict with or prevent the application of regulations promulgated by HHS under subtitle D of title I of the Affordable Care Act.

(b) *Non-interference with State law.* Nothing in parts 155, 156, or 157 of this subchapter shall be construed to preempt any State law that does not prevent the application of the provisions of title I of the Affordable Care Act.

(c) *Non-discrimination.* In carrying out the requirements of this part, the State and the Exchange must:

(1) Comply with applicable non-discrimination statutes; and

(2) Not discriminate based on race, color, national origin, disability, age, sex, gender identity or sexual orientation.

§ 155.130 Stakeholder consultation.

The Exchange must regularly consult on an ongoing basis with the following stakeholders:

(a) Educated health care consumers who are enrollees in QHPs;

(b) Individuals and entities with experience in facilitating enrollment in health coverage;

(c) Advocates for enrolling hard to reach populations, which include individuals with mental health or substance abuse disorders;

(d) Small businesses and self-employed individuals;

(e) State Medicaid and CHIP agencies;

(f) Federally-recognized Tribes, as defined in the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a, that are located within such Exchange's geographic area;

(g) Public health experts;

(h) Health care providers;

(i) Large employers;

(j) Health insurance issuers; and

(k) Agents and brokers.

§ 155.140 Establishment of a regional Exchange or subsidiary Exchange.

(a) *Regional Exchange.* A State may participate in a regional Exchange if:

(1) The Exchange spans two or more States, regardless of whether the States are contiguous; and

(2) The regional Exchange submits a single Exchange Blueprint and is approved to operate consistent with § 155.105(c).

(b) *Subsidiary Exchange.* A State may establish one or more subsidiary Exchanges within the State if:

(1) Each such Exchange serves a geographically distinct area; and

(2) The area served by each subsidiary Exchange is at least as large as a rating area described in section 2701(a) of the PHS Act.

(c) *Exchange standards.* Each regional or subsidiary Exchange must:

(1) Otherwise meet the requirements of an Exchange consistent with this part; and

(2) Meet the following standards for SHOP:

(i) Perform the functions of a SHOP for its service area in accordance with subpart H of this part; and

(ii) If a State elects to operate its individual market Exchange and SHOP under two governance or administrative structures as described in § 155.110(e), the SHOP must encompass a geographic area that matches the geographic area of the regional or subsidiary Exchange.

§ 155.150 Transition process for existing State health insurance exchanges.

(a) *Presumption.* Unless an exchange is determined to be non-compliant through the process in paragraph (b) of this section, HHS will otherwise presume that an existing State exchange meets the standards under this part if:

(1) The exchange was in operation prior to January 1, 2010; and

(2) The State has insured a percentage of its population not less than the percentage of the population projected to be covered nationally after the implementation of the Affordable Care Act, according to the Congressional Budget Office estimates for projected coverage in 2016 that were published on March 30, 2011.

(b) *Process for determining non-compliance.* Any State described in paragraph (a) of this section must work with HHS to identify areas of non-compliance with the standards under this part.

§ 155.160 Financial support for continued operations.

(a) *Definition.* For purposes of this section, participating issuers has the meaning provided in § 156.50.

(b) *Funding for ongoing operations.* A State must ensure that its Exchange has sufficient funding in order to support its ongoing operations beginning January 1, 2015, as follows:

(1) States may generate funding, such as through user fees on participating issuers, for Exchange operations; and

(2) No Federal grants under section 1311 of the Affordable Care Act will be awarded for State Exchange establishment after January 1, 2015.

Subpart C—General Functions of an Exchange

§ 155.200 Functions of an Exchange.

(a) *General requirements.* The Exchange must perform the minimum functions described in this subpart and in subparts D, E, H, and K of this part.

(b) *Certificates of exemption.* The Exchange must issue certificates of exemption consistent with sections 1311(d)(4)(H) and 1411 of the Affordable Care Act.

(c) *Oversight and financial integrity.* The Exchange must perform required functions related to oversight and financial integrity requirements in accordance with section 1313 of the Affordable Care Act.

(d) *Quality activities.* The Exchange must evaluate quality improvement strategies and oversee implementation of enrollee satisfaction surveys,

assessment and ratings of health care quality and outcomes, information disclosures, and data reporting in accordance with sections 1311(c)(1), 1311(c)(3), and 1311(c)(4) of the Affordable Care Act.

(e) *Clarification.* In carrying out its responsibilities under this subpart, an Exchange is not operating on behalf of a QHP.

§ 155.205 Consumer assistance tools and programs of an Exchange.

(a) *Call center.* The Exchange must provide for operation of a toll-free call center that addresses the needs of consumers requesting assistance and meets the requirements outlined in paragraphs (c)(1), (c)(2)(i), and (c)(3) of this section.

(b) *Internet Web site.* The Exchange must maintain an up-to-date Internet Web site that meets the requirements outlined in paragraph (c) of this section and:

(1) Provides standardized comparative information on each available QHP, including at a minimum:

(i) Premium and cost-sharing information;

(ii) The summary of benefits and coverage established under section 2715 of the PHS Act;

(iii) Identification of whether the QHP is a bronze, silver, gold, or platinum level plan as defined by section 1302(d) of the Affordable Care Act, or a catastrophic plan as defined by section 1302(e) of the Affordable Care Act;

(iv) The results of the enrollee satisfaction survey, as described in section 1311(c)(4) of the Affordable Care Act;

(v) Quality ratings assigned in accordance with section 1311(c)(3) of the Affordable Care Act;

(vi) Medical loss ratio information as reported to HHS in accordance with 45 CFR part 158;

(vii) Transparency of coverage measures reported to the Exchange during certification in accordance with § 155.1040; and

(viii) The provider directory made available to the Exchange in accordance with § 156.230.

(2) Publishes the following financial information:

(i) The average costs of licensing required by the Exchange;

(ii) Any regulatory fees required by the Exchange;

(iii) Any payments required by the Exchange in addition to fees under paragraphs (b)(2)(i) and (ii) of this section;

(iv) Administrative costs of such Exchange; and

(v) Monies lost to waste, fraud, and abuse.

(3) Provides applicants with information about Navigators as described in § 155.210 and other consumer assistance services, including the toll-free telephone number of the Exchange call center required in paragraph (a) of this section.

(4) Allows for an eligibility determination to be made in accordance with subpart D of this part.

(5) Allows a qualified individual to select a QHP in accordance with subpart E of this part.

(6) Makes available by electronic means a calculator to facilitate the comparison of available QHPs after the application of any advance payments of the premium tax credit and any cost-sharing reductions.

(c) *Accessibility.* Information must be provided to applicants and enrollees in plain language and in a manner that is accessible and timely to—

(1) Individuals living with disabilities including accessible Web sites and the provision of auxiliary aids and services at no cost to the individual in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act.

(2) Individuals who are limited English proficient through the provision of language services at no cost to the individual, including

(i) Oral interpretation;

(ii) Written translations; and

(iii) Taglines in non-English languages indicating the availability of language services.

(3) Inform individuals of the availability of the services described in paragraphs (c)(1) and (2) of this section and how to access such services.

(d) *Consumer assistance.* The Exchange must have a consumer assistance function that meets the standards in paragraph (c) of this section, including the Navigator program described in § 155.210, and must refer consumers to consumer assistance programs in the State when available and appropriate.

(e) *Outreach and education.* The Exchange must conduct outreach and education activities that meet the standards in paragraph (c) of this section to educate consumers about the Exchange and insurance affordability programs to encourage participation.

§ 155.210 Navigator program standards.

(a) *General Requirements.* The Exchange must establish a Navigator program consistent with this section through which it awards grants to eligible public or private entities or individuals described in paragraph (c) of this section.

(b) *Standards.* The Exchange must develop and publicly disseminate—

(1) A set of standards, to be met by all entities and individuals to be awarded Navigator grants, designed to prevent, minimize and mitigate any conflicts of interest, financial or otherwise, that may exist for an entity or individuals to be awarded a Navigator grant and to ensure that all entities and individuals carrying out Navigator functions have appropriate integrity; and

(2) A set of training standards, to be met by all entities and individuals carrying out Navigator functions under the terms of a Navigator grant, to ensure expertise in:

(i) The needs of underserved and vulnerable populations;

(ii) Eligibility and enrollment rules and procedures;

(iii) The range of QHP options and insurance affordability programs; and,

(iv) The privacy and security standards applicable under § 155.260.

(c) *Entities and individuals eligible to be a Navigator.* (1) To receive a Navigator grant, an entity or individual must—

(i) Be capable of carrying out at least those duties described in paragraph (e) of this section;

(ii) Demonstrate to the Exchange that the entity has existing relationships, or could readily establish relationships, with employers and employees, consumers (including uninsured and underinsured consumers), or self-employed individuals likely to be eligible for enrollment in a QHP;

(iii) Meet any licensing, certification or other standards prescribed by the State or Exchange, if applicable;

(iv) Not have a conflict of interest during the term as Navigator; and,

(v) Comply with the privacy and security standards adopted by the Exchange as required in accordance with § 155.260.

(2) The Exchange must include an entity as described in paragraph (c)(2)(i) of this section and an entity from at least one of the other following categories for receipt of a Navigator grant:

(i) Community and consumer-focused nonprofit groups;

(ii) Trade, industry, and professional associations;

(iii) Commercial fishing industry organizations, ranching and farming organizations;

(iv) Chambers of commerce;

(v) Unions;

(vi) Resource partners of the Small Business Administration;

(vii) Licensed agents and brokers; and

(viii) Other public or private entities or individuals that meet the requirements of this section. Other entities may include but are not limited

to Indian tribes, tribal organizations, urban Indian organizations, and State or local human service agencies.

(d) *Prohibition on Navigator conduct.* The Exchange must ensure that a Navigator must not—

(1) Be a health insurance issuer;

(2) Be a subsidiary of a health insurance issuer;

(3) Be an association that includes members of, or lobbies on behalf of, the insurance industry; or,

(4) Receive any consideration directly or indirectly from any health insurance issuer in connection with the enrollment of any individuals or employees in a QHP or a non-QHP.

(e) *Duties of a Navigator.* An entity that serves as a Navigator must carry out at least the following duties:

(1) Maintain expertise in eligibility, enrollment, and program specifications and conduct public education activities to raise awareness about the Exchange;

(2) Provide information and services in a fair, accurate and impartial manner. Such information must acknowledge other health programs;

(3) Facilitate selection of a QHP;

(4) Provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman established under section 2793 of the PHS Act, or any other appropriate State agency or agencies, for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage; and

(5) Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange, including individuals with limited English proficiency, and ensure accessibility and usability of Navigator tools and functions for individuals with disabilities in accordance with the Americans with Disabilities Act and section 504 of the Rehabilitation Act.

(f) *Funding for Navigator grants.* Funding for Navigator grants may not be from Federal funds received by the State to establish the Exchange.

§ 155.220 Ability of States to permit agents and brokers to assist qualified individuals, qualified employers, or qualified employees enrolling in QHPs.

(a) *General rule.* A State may permit agents and brokers to—

(1) Enroll individuals, employers or employees in any QHP in the individual or small group market as soon as the QHP is offered through an Exchange in the State;

(2) Subject to paragraphs (c), (d), and (e) of this section, enroll qualified individuals in a QHP in a manner that constitutes enrollment through the Exchange; and

(3) Subject to paragraphs (d) and (e) of this section, assist individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs.

(b) *Web site disclosure.* The Exchange may elect to provide information regarding licensed agents and brokers on its Web site for the convenience of consumers seeking insurance through that Exchange.

(c) *Enrollment through the Exchange.* A qualified individual may be enrolled in a QHP through the Exchange with the assistance of an agent or broker if—

(1) The agent or broker ensures the applicant's completion of an eligibility verification and enrollment application through the Exchange Web site as described in § 155.405;

(2) The Exchange transmits enrollment information to the QHP issuer as provided in § 155.400(a) to allow the issuer to effectuate enrollment of qualified individuals in the QHP.

(3) When an Internet Web site of the agent or broker is used to complete the QHP selection, at a minimum the Internet Web site must:

(i) Meet all standards for disclosure and display of QHP information contained in § 155.205(b)(1) and (c);

(ii) Provide consumers the ability to view all QHPs offered through the Exchange;

(iii) Not provide financial incentives, such as rebates or giveaways;

(iv) Display all QHP data provided by the Exchange;

(v) Maintain audit trails and records in an electronic format for a minimum of ten years; and

(vi) Provide consumers with the ability to withdraw from the process and use the Exchange Web site described in § 155.205(b) instead at any time.

(d) *Agreement.* An agent or broker that enrolls qualified individuals in a QHP in a manner that constitutes enrollment through the Exchange or assists individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs must comply with the terms of an agreement between the agent or broker and the Exchange under which the agent or broker at least:

(1) Registers with the Exchange in advance of assisting qualified individuals enrolling in QHPs through the Exchange;

(2) Receives training in the range of QHP options and insurance affordability programs; and

(3) Complies with the Exchange's privacy and security standards adopted consistent with § 155.260.

(e) *Compliance with State law.* An agent or broker that enrolls qualified individuals in a QHP in a manner that constitutes enrollment through the Exchange or assists individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs must comply with applicable State law related to agents and brokers, including applicable State law related to confidentiality and conflicts of interest.

§ 155.230 General standards for Exchange notices.

(a) *General requirement.* Any notice required to be sent by an Exchange to applicants, qualified individuals, qualified employees, qualified employers, and enrollees must be written and include:

(1) Contact information for available customer service resources;

(2) An explanation of appeal rights, if applicable; and

(3) A citation to or identification of the specific regulation supporting the action, including the reason for the intended action.

(b) *Accessibility and readability requirements.* All applications, forms, and notices, including the single, streamlined application described in § 155.405 and notice of annual redetermination described in § 155.335(c), must conform to the standards outlined in § 155.205(c).

(c) *Re-evaluation of appropriateness and usability.* The Exchange must re-evaluate the appropriateness and usability of applications, forms, and notices.

§ 155.240 Payment of premiums.

(a) *Payment by individuals.* The Exchange must allow a qualified individual to pay any applicable premium owed by such individual directly to the QHP issuer.

(b) *Payment by tribes, tribal organizations, and urban Indian organizations.* The Exchange may permit Indian tribes, tribal organizations and urban Indian organizations to pay aggregated QHP premiums on behalf of qualified individuals, including aggregated payment, subject to terms and conditions determined by the Exchange.

(c) *Payment facilitation.* The Exchange may establish a process to facilitate through electronic means the collection and payment of premiums to QHP issuers.

(d) *Required standards.* In conducting an electronic transaction with a QHP

issuer that involves the payment of premiums or an electronic funds transfer, the Exchange must comply with the privacy and security standards adopted in accordance with § 155.260 and use the standards and operating rules referenced in § 155.270.

§ 155.260 Privacy and security of personally identifiable information.

(a) *Creation, collection, use and disclosure.* (1) Where the Exchange creates or collects personally identifiable information for the purposes of determining eligibility for enrollment in a qualified health plan; determining eligibility for other insurance affordability programs, as defined in 155.20; or determining eligibility for exemptions from the individual responsibility provisions in section 5000A of the Code, the Exchange may only use or disclose such personally identifiable information to the extent such information is necessary to carry out the functions described in § 155.200 of this subpart.

(2) The Exchange may not create, collect, use, or disclose personally identifiable information while the Exchange is fulfilling its responsibilities in accordance with § 155.200 of this subpart unless the creation, collection, use, or disclosure is consistent with this section.

(3) The Exchange must establish and implement privacy and security standards that are consistent with the following principles:

(i) *Individual access.* Individuals should be provided with a simple and timely means to access and obtain their personally identifiable health information in a readable form and format;

(ii) *Correction.* Individuals should be provided with a timely means to dispute the accuracy or integrity of their personally identifiable health information and to have erroneous information corrected or to have a dispute documented if their requests are denied;

(iii) *Openness and transparency.* There should be openness and transparency about policies, procedures, and technologies that directly affect individuals and/or their personally identifiable health information;

(iv) *Individual choice.* Individuals should be provided a reasonable opportunity and capability to make informed decisions about the collection, use, and disclosure of their personally identifiable health information;

(v) *Collection, use, and disclosure limitations.* Personally identifiable health information should be created, collected, used, and/or disclosed only to the extent necessary to accomplish a specified purpose(s) and never to discriminate inappropriately;

(vi) *Data quality and integrity.* Persons and entities should take reasonable steps to ensure that personally identifiable health information is complete, accurate, and up-to-date to the extent necessary for the person's or entity's intended purposes and has not been altered or destroyed in an unauthorized manner;

(vii) *Safeguards.* Personally identifiable health information should be protected with reasonable operational, administrative, technical, and physical safeguards to ensure its confidentiality, integrity, and availability and to prevent unauthorized or inappropriate access, use, or disclosure; and,

(viii) *Accountability.* These principles should be implemented, and adherence assured, through appropriate monitoring and other means and methods should be in place to report and mitigate non-adherence and breaches.

(4) For the purposes of implementing the principle described in paragraph (a)(3)(vii) of this section, the Exchange must establish and implement operational, technical, administrative and physical safeguards that are consistent with any applicable laws (including this section) to ensure—

(i) The confidentiality, integrity, and availability of personally identifiable information created, collected, used, and/or disclosed by the Exchange;

(ii) Personally identifiable information is only used by or disclosed to those authorized to receive or view it;

(iii) Return information, as such term is defined by section 6103(b)(2) of the Code, is kept confidential under section 6103 of the Code;

(iv) Personally identifiable information is protected against any reasonably anticipated threats or hazards to the confidentiality, integrity, and availability of such information;

(v) Personally identifiable information is protected against any reasonably anticipated uses or disclosures of such information that are not permitted or required by law; and

(vi) Personally identifiable information is securely destroyed or disposed of in an appropriate and reasonable manner and in accordance with retention schedules;

(5) The Exchange must monitor, periodically assess, and update the security controls and related system risks to ensure the continued effectiveness of those controls.

(6) The Exchange must develop and utilize secure electronic interfaces when sharing personally identifiable information electronically.

(b) *Application to non-Exchange entities.* Except for tax return information, which is governed by section 6103 of the Code, when collection, use or disclosure is not otherwise required by law, an Exchange must require the same or more stringent privacy and security standards (as § 155.260(a)) as a condition of contract or agreement with individuals or entities, such as Navigators, agents, and brokers, that:

(1) Gain access to personally identifiable information submitted to an Exchange; or

(2) Collect, use or disclose personally identifiable information gathered directly from applicants, qualified individuals, or enrollees while that individual or entity is performing the functions outlined in the agreement with the Exchange.

(c) *Workforce compliance.* The Exchange must ensure its workforce complies with the policies and procedures developed and implemented by the Exchange to comply with this section.

(d) *Written policies and procedures.* Policies and procedures regarding the collection, use, and disclosure of personally identifiable information must, at minimum:

(1) Be in writing, and available to the Secretary of HHS upon request; and

(2) Identify applicable law governing collection, use, and disclosure of personally identifiable information.

(e) *Data sharing.* Data matching and sharing arrangements that facilitate the sharing of personally identifiable information between the Exchange and agencies administering Medicaid, CHIP or the BHP for the exchange of eligibility information must:

(1) Meet any applicable requirements described in this section;

(2) Meet any applicable requirements described in section 1413(c)(1) and (c)(2) of the Affordable Care Act;

(3) Be equal to or more stringent than the requirements for Medicaid programs under section 1942 of the Act; and

(4) For those matching agreements that meet the definition of ''matching program'' under 5 U.S.C. 552a(a)(8), comply with 5 U.S.C. 552a(o).

(f) *Compliance with the Code.* Return information, as defined in section 6103(b)(2) of the Code, must be kept confidential and disclosed, used, and maintained only in accordance with section 6103 of the Code.

(g) *Improper use and disclosure of information.* Any person who knowingly and willfully uses or discloses information in violation of

section 1411(g) of the Affordable Care Act will be subject to a civil penalty of not more than $25,000 per person or entity, per use or disclosure, in addition to other penalties that may be prescribed by law.

§ 155.270 Use of standards and protocols for electronic transactions.

(a) *HIPAA administrative simplification.* To the extent that the Exchange performs electronic transactions with a covered entity, the Exchange must use standards, implementation specifications, operating rules, and code sets adopted by the Secretary in 45 CFR parts 160 and 162.

(b) *HIT enrollment standards and protocols.* The Exchange must incorporate interoperable and secure standards and protocols developed by the Secretary in accordance with section 3021 of the PHS Act. Such standards and protocols must be incorporated within Exchange information technology systems.

Subpart D—Exchange Functions in the Individual Market: Eligibility Determinations for Exchange Participation and Insurance Affordability Programs

§ 155.300 Definitions and general standards for eligibility determinations.

(a) *Definitions.* In addition to those definitions in § 155.20, for purposes of this subpart, the following terms have the following meaning:

Adoption taxpayer identification number has the same meaning as it does in 26 CFR 301.6109–3(a).

Applicable Children's Health Insurance Program (CHIP) MAGI-based income standard means the applicable income standard as defined at 42 CFR 457.310(b)(1), as applied under the State plan adopted in accordance with title XXI of the Act, or waiver of such plan and as certified by the State CHIP Agency in accordance with 42 CFR 457.348(d), for determining eligibility for child health assistance and enrollment in a separate child health program.

Applicable Medicaid modified adjusted gross income (MAGI)-based income standard has the same meaning as ''applicable modified adjusted gross income standard,'' as defined at 42 CFR 435.911(b), as applied under the State plan adopted in accordance with title XIX of the Act, or waiver of such plan, and as certified by the State Medicaid agency in accordance with 42 CFR 435.1200(b)(2) for determining eligibility for Medicaid.

Federal poverty level or *FPL* means the most recently published Federal poverty level, updated periodically in the **Federal Register** by the Secretary of Health and Human Services under the authority of 42 U.S.C. 9902(2), as of the first day of the annual open enrollment period for coverage in a QHP through the Exchange, as specified in § 155.410.

Indian means any individual as defined in section 4(d) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638).

Insurance affordability program has the same meaning as ''insurance affordability program,'' as specified in 42 CFR 435.4.

MAGI-based income has the same meaning as it does in 42 CFR 435.603(e).

Minimum value, when used to describe coverage in an eligible employer-sponsored plan, means that the plan meets the requirements with respect to coverage of the total allowed costs of benefits set forth in section 36B(c)(2)(C)(ii) of the Code.

Modified Adjusted Gross Income (MAGI) has the same meaning as it does in section 36B(d)(2)(B) of the Code.

Non-citizen means an individual who is not a citizen or national of the United States, in accordance with section 101(a)(3) of the Immigration and Nationality Act.

Qualifying coverage in an eligible employer-sponsored plan means coverage in an eligible employer-sponsored plan that meets the affordability and minimum value standards specified in section 36B(c)(2)(C) of the Code.

State CHIP Agency means the agency that administers a separate child health program established by the State under title XXI of the Act in accordance with implementing regulations at 42 CFR 457.

State Medicaid Agency means the agency established or designated by the State under title XIX of the Act that administers the Medicaid program in accordance with implementing regulations at 42 CFR parts 430 through 456.

Tax dependent has the same meaning as the term dependent under section 152 of the Code.

Tax filer means an individual, or a married couple, who indicates that he, she or they expects—

(1) To file an income tax return for the benefit year, in accordance with 26 U.S.C. 6011, 6012, and implementing regulations;

(2) If married (within the meaning of 26 CFR 1.7703–1), to file a joint tax return for the benefit year;

(3) That no other taxpayer will be able to claim him, her or them as a tax dependent for the benefit year; and

(4) That he, she, or they expects to claim a personal exemption deduction under section 151 of the Code on his or her tax return for one or more applicants, who may or may not include himself or herself and his or her spouse.

(b) *Medicaid and CHIP.* In general, references to Medicaid and CHIP regulations in this subpart refer to those regulations as implemented in accordance with rules and procedures which are the same as those applied by the State Medicaid or State CHIP agency or approved by such agency in the agreement described in § 155.345(a).

(c) *Attestation.* (1) Except as specified in paragraph (c)(2) of this section, for the purposes of this subpart, an attestation may be made by the application filer.

(2) The attestations specified in § 155.310(d)(2)(ii) and § 155.315(f)(4)(ii) must be provided by the tax filer.

(d) *Reasonably compatible.* For purposes of this subpart, the Exchange must consider information obtained through electronic data sources, other information provided by the applicant, or other information in the records of the Exchange to be reasonably compatible with an applicant's attestation if the difference or discrepancy does not impact the eligibility of the applicant, including the amount of advance payments of the premium tax credit or category of cost-sharing reductions.

§ 155.302 Options for conducting eligibility determinations.

(a) *Options for conducting eligibility determinations.* The Exchange may satisfy the requirements of this subpart—

(1) Directly or through contracting arrangements in accordance with § 155.110(a); or

(2) Through a combination of the approach described in paragraph (a)(1) of this section and one or both of the options described in paragraph (b) or (c) of this section, subject to the standards in paragraph (d) of this section.

(b) *Medicaid and CHIP.* Notwithstanding the requirements of this subpart, the Exchange may conduct an assessment of eligibility for Medicaid and CHIP, rather than an eligibility determination for Medicaid and CHIP, provided that—

(1) The Exchange makes such an assessment based on the applicable Medicaid and CHIP MAGI-based income standards and citizenship and immigration status, using verification rules and procedures consistent with 42 CFR parts 435 and 457, without regard to how such standards are implemented

by the State Medicaid and CHIP agencies.

(2) Notices and other activities required in connection with an eligibility determination for Medicaid or CHIP are performed by the Exchange consistent with the standards identified in this subpart or the State Medicaid or CHIP agency consistent with applicable law.

(3) *Applicants found potentially eligible for Medicaid or CHIP.* When the Exchange assesses an applicant as potentially eligible for Medicaid or CHIP consistent with the standards in subparagraph (b)(1) of this section, the Exchange transmits all information provided as a part of the application, update, or renewal that initiated the assessment, and any information obtained or verified by the Exchange to the State Medicaid agency or CHIP agency via secure electronic interface, promptly and without undue delay.

(4) *Applicants not found potentially eligible for Medicaid and CHIP.* (i) If the Exchange conducts an assessment in accordance with paragraph (b) of this section and finds that an applicant is not potentially eligible for Medicaid or CHIP based on the applicable Medicaid and CHIP MAGI-based income standards, the Exchange must consider the applicant as ineligible for Medicaid and CHIP for purposes of determining eligibility for advance payments of the premium tax credit and cost-sharing reductions and must notify such applicant, and provide him or her with the opportunity to—

(A) Withdraw his or her application for Medicaid and CHIP; or

(B) Request a full determination of eligibility for Medicaid and CHIP by the applicable State Medicaid and CHIP agencies.

(ii) To the extent that an applicant described in paragraph (b)(4)(i) of this section requests a full determination of eligibility for Medicaid and CHIP, the Exchange must—

(A) Transmit all information provided as a part of the application, update, or renewal that initiated the assessment, and any information obtained or verified by the Exchange to the State Medicaid agency and CHIP agency via secure electronic interface, promptly and without undue delay; and

(B) Consider such an applicant as ineligible for Medicaid and CHIP for purposes of determining eligibility for advance payments of the premium tax credit and cost-sharing reductions until the State Medicaid or CHIP agency notifies the Exchange that the applicant is eligible for Medicaid or CHIP.

(5) The Exchange adheres to the eligibility determination for Medicaid or CHIP made by the State Medicaid or CHIP agency;

(6) The Exchange and the State Medicaid and CHIP agencies enter into an agreement specifying their respective responsibilities in connection with eligibility determinations for Medicaid and CHIP.

(c) *Advance payments of the premium tax credit and cost-sharing reductions.* Notwithstanding the requirements of this subpart, the Exchange may implement a determination of eligibility for advance payments of the premium tax credit and cost-sharing reductions made by HHS, provided that—

(1) Verifications, notices, and other activities required in connection with an eligibility determination for advance payments of the premium tax credit and cost-sharing reductions are performed by the Exchange in accordance with the standards identified in this subpart or by HHS in accordance with the agreement described in paragraph (c)(4) of this section;

(2) The Exchange transmits all information provided as a part of the application, update, or renewal that initiated the eligibility determination, and any information obtained or verified by the Exchange, to HHS via secure electronic interface, promptly and without undue delay;

(3) The Exchange adheres to the eligibility determination for advance payments of the premium tax credit and cost-sharing reductions made by HHS; and

(4) The Exchange and HHS enter into an agreement specifying their respective responsibilities in connection with eligibility determinations for advance payments of the premium tax credit and cost-sharing reductions.

(d) *Standards.* To the extent that assessments of eligibility for Medicaid and CHIP based on MAGI or eligibility determinations for advance payments of the premium tax credit and cost-sharing reductions are made in accordance with paragraphs (b) or (c) of this section, the Exchange must ensure that—

(1) Eligibility processes for all insurance affordability programs are streamlined and coordinated across HHS, the Exchange, the State Medicaid agency, and the State CHIP agency, as applicable;

(2) Such arrangement does not increase administrative costs and burdens on applicants, enrollees, beneficiaries, or application filers, or increase delay; and

(3) Applicable requirements under 45 CFR 155.260, 155.270, and 155.315(i), and section 6103 of the Code with respect to the confidentiality, disclosure, maintenance, and use of information are met.

§ 155.305 Eligibility standards.

(a) *Eligibility for enrollment in a QHP through the Exchange.* The Exchange must determine an applicant eligible for enrollment in a QHP through the Exchange if he or she meets the following requirements:

(1) *Citizenship, status as a national, or lawful presence.* Is a citizen or national of the United States, or is a non-citizen who is lawfully present in the United States, and is reasonably expected to be a citizen, national, or a non-citizen who is lawfully present for the entire period for which enrollment is sought;

(2) *Incarceration.* Is not incarcerated, other than incarceration pending the disposition of charges; and

(3) *Residency.* Meets the applicable residency standard identified in this paragraph (a)(3).

(i) For an individual who is age 21 and over, is not living in an institution as defined in 42 CFR 435.403(b), is capable of indicating intent, and is not receiving an optional State supplementary payment as addressed in 42 CFR 435.403(f), the service area of the Exchange of the individual is the service areas of the Exchange in which he or she is living and—

(A) Intends to reside, including without a fixed address; or

(B) Has entered with a job commitment or is seeking employment (whether or not currently employed).

(ii) For an individual who is under the age of 21, is not living in an institution as defined in 42 CFR 435.403(b), is not eligible for Medicaid based on receipt of assistance under title IV–E of the Social Security Act as addressed in 42 CFR 435.403(g), is not emancipated, is not receiving an optional State supplementary payment as addressed in 42 CFR 435.403(f), the Exchange service area of the individual—

(A) Is the service area of the Exchange in which he or she resides, including without a fixed address; or

(B) Is the service area of the Exchange of a parent or caretaker, established in accordance with paragraph (a)(3)(i) of this section, with whom the individual resides.

(iii) *Other special circumstances.* In the case of an individual who is not described in paragraphs (a)(3)(i) or (ii) of this section, the Exchange must apply the residency requirements described in 42 CFR 435.403 with respect to the service area of the Exchange.

(iv) *Special rule for tax households with members in multiple Exchange*

service areas. (A) Except as specified in paragraph (a)(3)(iv)(B) of this section if all of the members of a tax household are not within the same Exchange service area, in accordance with the applicable standards in paragraphs (a)(3)(i), (ii), and (iii) of this section, any member of the tax household may enroll in a QHP through any of the Exchanges for which one of the tax filers meets the residency standard.

(B) If both spouses in a tax household enroll in a QHP through the same Exchange, a tax dependent may only enroll in a QHP through that Exchange, or through the Exchange that services the area in which the dependent meets a residency standard described in paragraphs (a)(3)(i), (ii), or (iii) of this section.

(b) *Eligibility for QHP enrollment periods.* The Exchange must determine an applicant eligible for an enrollment period if he or she meets the criteria for an enrollment period, as specified in §§ 155.410 and 155.420.

(c) *Eligibility for Medicaid.* The Exchange must determine an applicant eligible for Medicaid if he or she meets the non-financial eligibility criteria for Medicaid for populations whose eligibility is based on MAGI-based income, as certified by the Medicaid agency in accordance with 42 CFR 435.1200(b)(2), has a household income, as defined in 42 CFR 435.603(d), that is at or below the applicable Medicaid MAGI-based income standard as defined in 42 CFR 435.911(b)(1) and—

(1) Is a pregnant woman, as defined in the Medicaid State Plan in accordance with 42 CFR 435.4;

(2) Is under age 19;

(3) Is a parent or caretaker relative of a dependent child, as defined in the Medicaid State plan in accordance with 42 CFR 435.4; or

(4) Is not described in paragraph (c)(1), (2), or (3) of this section, is under age 65 and is not entitled to or enrolled for benefits under part A of title XVIII of the Social Security Act, or enrolled for benefits under part B of title XVIII of the Social Security Act.

(d) *Eligibility for CHIP.* The Exchange must determine an applicant eligible for CHIP if he or she meets the requirements of 42 CFR 457.310 through 457.320 and has a household income, as defined in 42 CFR 435.603(d), at or below the applicable CHIP MAGI-based income standard.

(e) *Eligibility for BHP.* If a BHP is operating in the service area of the Exchange, the Exchange must determine an applicant eligible for the BHP if he or she meets the requirements specified in section 1331(e) of the Affordable Care Act and regulations implementing that section.

(f) *Eligibility for advance payments of the premium tax credit.* (1) *In general.* The Exchange must determine a tax filer eligible for advance payments of the premium tax credit if the Exchange determines that—

(i) He or she is expected to have a household income, as defined in section 36B(d)(2) of the Code, of greater than or equal to 100 percent but not more than 400 percent of the FPL for the benefit year for which coverage is requested; and

(ii) One or more applicants for whom the tax filer expects to claim a personal exemption deduction on his or her tax return for the benefit year, including the tax filer and his or her spouse—

(A) Meets the requirements for eligibility for enrollment in a QHP through the Exchange, as specified in paragraph (a) of this section; and

(B) Is not eligible for minimum essential coverage, with the exception of coverage in the individual market, in accordance with section 36B(c)(2)(B) and (C) of the Code.

(2) *Special rule for non-citizens who are lawfully present and who are ineligible for Medicaid by reason of immigration status.* The Exchange must determine a tax filer eligible for advance payments of the premium tax credit if the Exchange determines that—

(i) He or she meets the requirements specified in paragraph (f)(1) of this section, except for paragraph (f)(1)(i);

(ii) He or she is expected to have a household income, as defined in section 36B(d)(2) of the Code, of less than 100 percent of the FPL for the benefit year for which coverage is requested; and

(iii) One or more applicants for whom the tax filer expects to claim a personal exemption deduction on his or her tax return for the benefit year, including the tax filer and his or her spouse, is a non-citizen who is lawfully present and ineligible for Medicaid by reason of immigration status, in accordance with section 36B(c)(1)(B) of the Code.

(3) *Enrollment required.* The Exchange may provide advance payments of the premium tax credit on behalf of a tax filer only if one or more applicants for whom the tax filer attests that he or she expects to claim a personal exemption deduction for the benefit year, including the tax filer and his or her spouse, is enrolled in a QHP through the Exchange.

(4) *Compliance with filing requirement.* The Exchange may not determine a tax filer eligible for advance payments of the premium tax credit if HHS notifies the Exchange as part of the process described in § 155.320(c)(3) that advance payments of the premium tax credit were made on behalf of the tax filer or either spouse if the tax filer is a married couple for a year for which tax data would be utilized for verification of household income and family size in accordance with § 155.320(c)(1)(i), and the tax filer or his or her spouse did not comply with the requirement to file an income tax return for that year as required by 26 U.S.C. 6011, 6012, and implementing regulations and reconcile the advance payments of the premium tax credit for that period.

(5) *Calculation of advance payments of the premium tax credit.* The Exchange must calculate advance payments of the premium tax credit in accordance with section 36B of the Code.

(6) *Collection of Social Security numbers.* The Exchange must require an application filer to provide the Social Security number of a tax filer who is not an applicant only if an applicant attests that the tax filer has a Social Security number and filed a tax return for the year for which tax data would be utilized for verification of household income and family size.

(g) *Eligibility for cost-sharing reductions.* (1) *Eligibility criteria.* (i) The Exchange must determine an applicant eligible for cost-sharing reductions if he or she—

(A) Meets the requirements for eligibility for enrollment in a QHP through the Exchange, as specified in paragraph (a) of this section;

(B) Meets the requirements for advance payments of the premium tax credit, as specified in paragraph (f) of this section; and

(C) Is expected to have a household income that does not exceed 250 percent of the FPL, for the benefit year for which coverage is requested.

(ii) The Exchange may only provide cost-sharing reductions to an enrollee who is not an Indian if he or she is enrolled through the Exchange in a silver-level QHP, as defined by section 1302(d)(1)(B) of the Affordable Care Act.

(2) *Eligibility categories.* The Exchange must use the following eligibility categories for cost-sharing reductions when making eligibility determinations under this section—

(i) An individual who is expected to have a household income greater than or equal to 100 percent of the FPL and less than or equal to 150 percent of the FPL for the benefit year for which coverage is requested, or for an individual who is eligible for advance payments of the premium tax credit under paragraph (f)(2) of this section, a household income less than 100 percent of the FPL

for the benefit year for which coverage is requested;

(ii) An individual is expected to have a household income greater than 150 percent of the FPL and less than or equal to 200 percent of the FPL for the benefit year for which coverage is requested; and

(iii) An individual who is expected to have a household income greater than 200 percent of the FPL and less than or equal to 250 percent of the FPL for the benefit year for which coverage is requested.

(3) *Special rule for multiple tax households.* To the extent that an enrollment in a QHP under a single policy covers individuals who are expected to be in different tax households for the benefit year for which coverage is requested, the Exchange must apply only the first category of cost-sharing reductions listed below for which the Exchange has determined that one of the applicants in the tax households is eligible.

(i) § 155.350(b);

(ii) Paragraph (g)(2)(iii) of this section;

(iii) Paragraph (g)(2)(ii) of this section;

(iv) Paragraph (g)(3)(i) of this section;

(v) § 155.350(a).

(4) For the purposes of paragraph (g) of this section, ''household income'' means household income as defined in section 36B(d)(2) of the Code.

§ 155.310 Eligibility process.

(a) *Application.* (1) *Accepting applications.* The Exchange must accept applications from individuals in the form and manner specified in § 155.405.

(2) *Information collection from non-applicants.* The Exchange may not request information regarding citizenship, status as a national, or immigration status for an individual who is not seeking coverage for himself or herself on any application or supplemental form.

(3) *Collection of Social Security numbers.* (i) The Exchange must require an applicant who has a Social Security number to provide such number to the Exchange.

(ii) The Exchange may not require an individual who is not seeking coverage for himself or herself to provide a Social Security number, except as specified in § 155.305(f)(6).

(b) *Applicant choice for Exchange to determine eligibility for insurance affordability programs.* The Exchange must permit an applicant to request only an eligibility determination for enrollment in a QHP through the Exchange; however, the Exchange may not permit an applicant to request an eligibility determination for less than all insurance affordability programs.

(c) *Timing.* The Exchange must accept an application and make an eligibility determination for an applicant seeking an eligibility determination at any point in time during the year.

(d) *Determination of eligibility.* (1) The Exchange must determine an applicant's eligibility, in accordance with the standards specified in § 155.305.

(2) *Special rules relating to advance payments of the premium tax credit.* (i) The Exchange must permit an enrollee to accept less than the full amount of advance payments of the premium tax credit for which he or she is determined eligible.

(ii) The Exchange may authorize advance payments of the premium tax credit on behalf of a tax filer only if the Exchange first obtains necessary attestations from the tax filer regarding advance payments of the premium tax credit, including, but not limited to attestations that—

(A) He or she will file an income tax return for the benefit year, in accordance with 26 U.S.C. 6011, 6012, and implementing regulations;

(B) If married (within the meaning of 26 CFR 1.7703–1), he or she will file a joint tax return for the benefit year;

(C) No other taxpayer will be able to claim him or her as a tax dependent for the benefit year; and

(D) He or she will claim a personal exemption deduction on his or her tax return for the applicants identified as members of his or her family, including the tax filer and his or her spouse, in accordance with § 155.320(c)(3)(i).

(3) *Special rule relating to Medicaid and CHIP.* To the extent that the Exchange determines an applicant eligible for Medicaid or CHIP, the Exchange must notify the State Medicaid or CHIP agency and transmit all information from the records of the Exchange to the State Medicaid or CHIP agency, promptly and without undue delay, that is necessary for such agency to provide the applicant with coverage.

(e) *Timeliness standards.* (1) The Exchange must determine eligibility promptly and without undue delay.

(2) The Exchange must assess the timeliness of eligibility determinations based on the period from the date of application or transfer from an agency administering an insurance affordability program to the date the Exchange notifies the applicant of its decision or the date the Exchange transfers the application to another agency administering an insurance affordability program, when applicable.

(f) *Effective dates for eligibility.* Upon making an eligibility determination, the Exchange must implement the eligibility determination under this section for enrollment in a QHP through the Exchange, advance payments of the premium tax credit, and cost-sharing reductions as follows—

(1) For an initial eligibility determination, in accordance with the dates specified in § 155.410(c) and (f) and § 155.420(b), as applicable,

(2) For a redetermination, in accordance with the dates specified in § 155.330(f) and § 155.335(i), as applicable.

(g) *Notification of eligibility determination.* The Exchange must provide timely written notice to an applicant of any eligibility determination made in accordance with this subpart.

(h) *Notice of an employee's eligibility for advance payments of the premium tax credit and cost-sharing reductions to an employer.* The Exchange must notify an employer that an employee has been determined eligible for advance payments of the premium tax credit or cost-sharing reductions upon determination that an employee is eligible for advance payments of the premium tax credit or cost-sharing reductions. Such notice must:

(1) Identify the employee;

(2) Indicate that the employee has been determined eligible for advance payments of the premium tax credit;

(3) Indicate that, if the employer has 50 or more full-time employees, the employer may be liable for the payment assessed under section 4980H of the Code; and

(4) Notify the employer of the right to appeal the determination.

(i) *Duration of eligibility determinations without enrollment.* To the extent that an applicant who is determined eligible for enrollment in a QHP does not select a QHP within his or her enrollment period in accordance with subpart E, and seeks a new enrollment period—

(1) Prior to the date on which his or her eligibility would have been redetermined in accordance with § 155.335 had he or she enrolled in a QHP, the Exchange must require the applicant to attest as to whether information affecting his or her eligibility has changed since his or her most recent eligibility determination before determining his or her eligibility for an enrollment period, and must process any changes reported in accordance with the procedures specified in § 155.330.

(2) On or after the date on which his or her eligibility would have been redetermined in accordance with § 155.335 had he or she enrolled in a QHP, the Exchange must apply the

procedures specified in § 155.335 before determining his or her eligibility for an enrollment period.

§ 155.315 Verification process related to eligibility for enrollment in a QHP through the Exchange.

(a) *General requirement.* Unless a request for modification is granted in accordance with paragraph (h) of this section, the Exchange must verify or obtain information as provided in this section in order to determine that an applicant is eligible for enrollment in a QHP through the Exchange.

(b) *Validation of Social Security number.* (1) For any individual who provides his or her Social Security number to the Exchange, the Exchange must transmit the Social Security number and other identifying information to HHS, which will submit it to the Social Security Administration.

(2) To the extent that the Exchange is unable to validate an individual's Social Security number through the Social Security Administration, the Exchange must follow the procedures specified in paragraph (f) of this section, except that the Exchange must provide the individual with a period of 90 days from the date on which the notice described in paragraph (f)(2)(i) of this section is received for the applicant to provide satisfactory documentary evidence or resolve the inconsistency with the Social Security Administration. The date on which the notice is received means 5 days after the date on the notice, unless the individual demonstrates that he or she did not receive the notice within the 5 day period.

(c) *Verification of citizenship, status as a national, or lawful presence.* (1) *Verification with records from the Social Security Administration.* For an applicant who attests to citizenship and has a Social Security number, the Exchange must transmit the applicant's Social Security number and other identifying information to HHS, which will submit it to the Social Security Administration.

(2) *Verification with the records of the Department of Homeland Security.* For an applicant who has documentation that can be verified through the Department of Homeland Security and who attests to lawful presence, or who attests to citizenship and for whom the Exchange cannot substantiate a claim of citizenship through the Social Security Administration, the Exchange must transmit information from the applicant's documentation and other identifying information to HHS, which will submit necessary information to the Department of Homeland Security for verification.

(3) *Inconsistencies and inability to verify information.* For an applicant who attests to citizenship, status as a national, or lawful presence, and for whom the Exchange cannot verify such attestation through the Social Security Administration or the Department of Homeland Security, the Exchange must follow the procedures specified in paragraph (f) of this section, except that the Exchange must provide the applicant with a period of 90 days from the date on which the notice described in paragraph (f)(2)(i) of this section is received for the applicant to provide satisfactory documentary evidence or resolve the inconsistency with the Social Security Administration or the Department of Homeland Security, as applicable. The date on which the notice is received means 5 days after the date on the notice, unless the applicant demonstrates that he or she did not receive the notice within the 5 day period.

(d) *Verification of residency.* The Exchange must verify an applicant's attestation that he or she meets the standards of § 155.305(a)(3) as follows—

(1) Except as provided in paragraphs (d)(3) and (4) of this section, accept his or her attestation without further verification; or

(2) Examine electronic data sources that are available to the Exchange and which have been approved by HHS for this purpose, based on evidence showing that such data sources are sufficiently current and accurate, and minimize administrative costs and burdens.

(3) If information provided by an applicant regarding residency is not reasonably compatible with other information provided by the individual or in the records of the Exchange the Exchange must examine information in data sources that are available to the Exchange and which have been approved by HHS for this purpose, based on evidence showing that such data sources are sufficiently current and accurate.

(4) If the information in such data sources is not reasonably compatible with the information provided by the applicant, the Exchange must follow the procedures specified in paragraph (f) of this section. Evidence of immigration status may not be used to determine that an applicant is not a resident of the Exchange service area.

(e) *Verification of incarceration status.* The Exchange must verify an applicant's attestation that he or she meets the requirements of § 155.305(a)(2) by—

(1) Relying on any electronic data sources that are available to the Exchange and which have been approved by HHS for this purpose, based on evidence showing that such data sources are sufficiently current, accurate, and offer less administrative complexity than paper verification; or

(2) Except as provided in paragraph (e)(3) of this section, if an approved data source is unavailable, accepting his or her attestation without further verification.

(3) To the extent that an applicant's attestation is not reasonably compatible with information from approved data sources described in paragraph (e)(1) of this section or other information provided by the applicant or in the records of the Exchange, the Exchange must follow the procedures specified in § 155.315(f).

(f) *Inconsistencies.* Except as otherwise specified in this subpart, for an applicant for whom the Exchange cannot verify information required to determine eligibility for enrollment in a QHP, advance payments of the premium tax credit, and cost-sharing reductions, including when electronic data is required in accordance with this subpart but not available, the Exchange:

(1) Must make a reasonable effort to identify and address the causes of such inconsistency, including through typographical or other clerical errors, by contacting the application filer to confirm the accuracy of the information submitted by the application filer;

(2) If unable to resolve the inconsistency through the process described in paragraph (f)(1) of this section, must—

(i) Provide notice to the applicant regarding the inconsistency; and

(ii) Provide the applicant with a period of 90 days from the date on which the notice described in paragraph (f)(2)(i) of this section is sent to the applicant to either present satisfactory documentary evidence via the channels available for the submission of an application, as described in § 155.405(c), except for by telephone through a call center, or otherwise resolve the inconsistency.

(3) May extend the period described in paragraph (f)(2)(ii) of this section for an applicant if the applicant demonstrates that a good faith effort has been made to obtain the required documentation during the period.

(4) During the period described in paragraph (f)(2)(ii) of this section, must:

(i) Proceed with all other elements of eligibility determination using the applicant's attestation, and provide eligibility for enrollment in a QHP to the

extent that an applicant is otherwise qualified; and

(ii) Ensure that advance payments of the premium tax credit and cost-sharing reductions are provided on behalf of an applicant within this period who is otherwise qualified for such payments and reductions, as described in § 155.305, if the tax filer attests to the Exchange that he or she understands that any advance payments of the premium tax credit paid on his or her behalf are subject to reconciliation.

(5) If, after the period described in paragraph (f)(2)(ii) of this section, the Exchange remains unable to verify the attestation, must—

(i) Determine the applicant's eligibility based on the information available from the data sources specified in this subpart, unless such applicant qualifies for the exception provided under paragraph (i) of this section, and notify the applicant of such determination in accordance with the notice requirements specified in § 155.310(g), including notice that the Exchange is unable to verify the attestation; and

(ii) Effectuate the determination specified in paragraph (f)(5)(i) of this section no earlier than 10 days after and no later than 30 days after the date on which the notice in paragraph (f)(5)(i) of this section is sent.

(g) *Exception for special circumstances.* For an applicant who does not have documentation with which to resolve the inconsistency through the process described in paragraph (f)(2) of this section because such documentation does not exist or is not reasonably available and for whom the Exchange is unable to otherwise resolve the inconsistency, with the exception of an inconsistency related to citizenship or immigration status, the Exchange must provide an exception, on a case-by-case basis, to accept an applicant's attestation as to the information which cannot otherwise be verified along with an explanation of circumstances as to why the applicant does not have documentation.

(h) *Flexibility in information collection and verification.* HHS may approve an Exchange Blueprint in accordance with § 155.105(d) or a significant change to the Exchange Blueprint in accordance with § 155.105(e) to modify the methods to be used for collection of information and verification of information as set forth in this subpart, as well as the specific information required to be collected, provided that HHS finds that such modification would reduce the administrative costs and burdens on individuals while maintaining accuracy and minimizing delay, that it would not undermine coordination with Medicaid and CHIP, and that applicable requirements under § 155.260, § 155.270, paragraph (i) of this section, and section 6103 of the Code with respect to the confidentiality, disclosure, maintenance, or use of such information will be met.

(i) *Applicant information.* The Exchange must not require an applicant to provide information beyond the minimum necessary to support the eligibility and enrollment processes of the Exchange, Medicaid, CHIP, and the BHP, if a BHP is operating in the service area of the Exchange, described in this subpart.

§ 155.320 Verification process related to eligibility for insurance affordability programs.

(a) *General requirements.* (1) The Exchange must verify information in accordance with this section only for an applicant or tax filer who requested an eligibility determination for insurance affordability programs in accordance with § 155.310(b).

(2) Unless a request for modification is granted in accordance with § 155.315(h), the Exchange must verify or obtain information in accordance with this section before making an eligibility determination for insurance affordability programs, and must use such information in such determination.

(b) *Verification of eligibility for minimum essential coverage other than through an eligible employer-sponsored plan.* (1) The Exchange must verify whether an applicant is eligible for minimum essential coverage other than through an eligible employer-sponsored plan, Medicaid, CHIP, or the BHP, using information obtained by transmitting identifying information specified by HHS to HHS.

(2) The Exchange must verify whether an applicant has already been determined eligible for coverage through Medicaid, CHIP, or the BHP, if a BHP is operating in the service area of the Exchange, within the State or States in which the Exchange operates using information obtained from the agencies administering such programs.

(c) *Verification of household income and family/household size.* (1) *Data.* (i) *Tax return data.* (A) For all individuals whose income is counted in calculating a tax filer's household income, in accordance with section 36B(d)(2) of the Code, or an applicant's household income, in accordance with 42 CFR 435.603(d), and for whom the Exchange has a Social Security number or an adoption taxpayer identification number, the Exchange must request tax return data regarding MAGI and family size from the Secretary of the Treasury by transmitting identifying information specified by HHS to HHS.

(B) If the identifying information for one or more individuals does not match a tax record on file with the Secretary of the Treasury that may be disclosed in accordance with section 6103(l)(21) of the Code and its accompanying regulations, the Exchange must proceed in accordance with § 155.315(f)(1).

(ii) *Data regarding MAGI-based income.* For all individuals whose income is counted in calculating a tax filer's household income, in accordance with section 36B(d)(2) of the Code, or an applicant's household income, in accordance with 42 CFR 435.603(d), the Exchange must request data regarding MAGI-based income in accordance with 42 CFR 435.948(a).

(2) *Verification process for Medicaid and CHIP.* (i) *Household size.* (A) The Exchange must verify household size in accordance with 42 CFR 435.945(a) or through other reasonable verification procedures consistent with the requirements in 42 CFR 435.952.

(B) The Exchange must verify the information in paragraph (c)(2)(i)(A) of this section by accepting an applicant's attestation without further verification, unless the Exchange finds that an applicant's attestation to the individuals that comprise his or her household for Medicaid and CHIP is not reasonably compatible with other information provided by the application filer for the applicant or in the records of the Exchange, in which case the Exchange must utilize data obtained through electronic data sources to verify the attestation. If such data sources are unavailable or information in such data sources is not reasonably compatible with the applicant's attestation, the Exchange must request additional documentation to support the attestation within the procedures specified in 42 CFR 435.952.

(ii) *Verification process for MAGI-based household income.* The Exchange must verify MAGI-based income, within the meaning of 42 CFR 435.603(d), for the household described in paragraph (c)(2)(i) in accordance with the procedures specified in Medicaid regulations 42 CFR 435.945, 42 CFR 435.948, and 42 CFR 435.952 and CHIP regulations at 42 CFR 457.380.

(3) *Verification process for advance payments of the premium tax credit and cost-sharing reductions.* (i) *Family size.* (A) The Exchange must require an applicant to attest to the individuals that comprise a tax filer's family for advance payments of the premium tax credit and cost-sharing reductions.

(B) To the extent that the applicant attests that the information described in paragraph (c)(1)(i) of this section represents an accurate projection of a tax filer's family size for the benefit year for which coverage is requested, the Exchange must determine the tax filer's eligibility for advance payments of the premium tax credit and cost-sharing reductions based on the family size data in paragraph (c)(1)(i) of this section.

(C) To the extent that the data described in paragraph (c)(1)(i) of this section is unavailable, or an applicant attests that a change in circumstances has occurred or is reasonably expected to occur, and so it does not represent an accurate projection of a tax filer's family size for the benefit year for which coverage is requested, the Exchange must verify the tax filer's family size for advance payments of the premium tax credit and cost-sharing reductions by accepting an applicant's attestation without further verification, except as specified in paragraph (c)(3)(i)(D) of this section.

(D) If Exchange finds that an applicant's attestation of a tax filer's family size is not reasonably compatible with other information provided by the application filer for the family or in the records of the Exchange, with the exception of the data described in paragraph (c)(1)(i) of this section, the Exchange must utilize data obtained through other electronic data sources to verify the attestation. If such data sources are unavailable or information in such data sources is not reasonably compatible with the applicant's attestation, the Exchange must request additional documentation to support the attestation within the procedures specified in § 155.315(f).

(ii) *Basic verification process for annual household income.* (A) The Exchange must compute annual household income for the family described in paragraph (c)(3)(i)(A) of this section based on the tax return data described in paragraph (c)(1)(i) of this section;

(B) The Exchange must require the applicant to attest regarding a tax filer's projected annual household income;

(C) To the extent that the applicant's attestation indicates that the information described in paragraph (c)(3)(ii)(A) of this section represents an accurate projection of the tax filer's household income for the benefit year for which coverage is requested, the Exchange must determine the tax filer's eligibility for advance payments of the premium tax credit and cost-sharing reductions based on the household income data in paragraph (c)(3)(ii)(A) of this section.

(D) To the extent that the data described in paragraph (c)(1)(i) of this section is unavailable, or an applicant attests that a change in circumstances has occurred or is reasonably expected to occur, and so it does not represent an accurate projection of the tax filer's household income for the benefit year for which coverage is requested, the Exchange must require the applicant to attest to the tax filer's projected household income for the benefit year for which coverage is requested.

(iii) *Verification process for increases in household income.* (A) If an applicant's attestation, in accordance with paragraph (c)(3)(ii)(B) of this section, indicates that a tax filer's annual household income has increased or is reasonably expected to increase from the data described in paragraph (c)(3)(ii)(A) of this section to the benefit year for which the applicant(s) in the tax filer's family are requesting coverage and the Exchange has not verified the applicant's MAGI-based income through the process specified in paragraph (c)(2)(ii) of this section to be within the applicable Medicaid or CHIP MAGI-based income standard, the Exchange must accept the applicant's attestation for the tax filer's family without further verification, except as provided in paragraph (c)(3)(iii)(B) of this section.

(B) If the Exchange finds that an applicant's attestation of a tax filer's annual household income is not reasonably compatible with other information provided by the application filer or available to the Exchange in accordance with paragraph (c)(1)(ii) of this section, the Exchange must utilize data obtained through electronic data sources to verify the attestation. If such data sources are unavailable or information in such data sources is not reasonably compatible with the applicant's attestation, the Exchange must request additional documentation using the procedures specified in § 155.315(f).

(iv) *Eligibility for alternate verification process for decreases in annual household income and situations in which tax return data is unavailable.* The Exchange must determine a tax filer's annual household income for advance payments of the premium tax credit and cost-sharing reductions based on the alternate verification procedures described in paragraph (c)(3)(v) of this section, if an applicant attests to projected annual household income in accordance with paragraph (c)(3)(ii)(B) of this section, the tax filer does not meet the criteria specified in paragraph (c)(3)(iii) of this section, the applicants in the tax filer's family have not established MAGI-based income through the process specified in paragraph (c)(2)(ii) of this section that is within the applicable Medicaid or CHIP MAGI-based income standard, and one of the following conditions is met—

(A) The Secretary of the Treasury does not have tax return data that may be disclosed under section 6103(l)(21) of the Code for the tax filer that is at least as recent as the calendar year two years prior to the calendar year for which advance payments of the premium tax credit or cost-sharing reductions would be effective;

(B) The applicant attests that the tax filer's applicable family size has changed or is reasonably expected to change for the benefit year for which the applicants in his or her family are requesting coverage, or the members of the tax filer's family have changed or are reasonably expected to change for the benefit year for which the applicants in his or her family are requesting coverage;

(C) The applicant attests that a change in circumstances has occurred or is reasonably expected to occur, and so the tax filer's annual household income has decreased or is reasonably expected to decrease from the data described in paragraph (c)(1)(i) of this section for the benefit year for which the applicants in his or her family are requesting coverage;

(D) The applicant attests that the tax filer's filing status has changed or is reasonably expected to change for the benefit year for which the applicants in his or her family are requesting coverage; or

(E) An applicant in the tax filer's family has filed an application for unemployment benefits.

(v) *Alternate verification process.* If a tax filer qualifies for an alternate verification process based on the requirements specified in paragraph (c)(3)(iv) of this section and the applicant's attestation to projected annual household income, as described in paragraph (c)(3)(ii)(B) of this section, is no more than ten percent below the annual household income computed in accordance with paragraph (c)(3)(ii)(A) of this section, the Exchange must accept the applicant's attestation without further verification.

(vi) *Alternate verification process for decreases in annual household income and situations in which tax return data is unavailable.* If a tax filer qualifies for an alternate verification process based on the requirements specified in paragraph (c)(3)(iv) of this section and the applicant's attestation to projected annual household income, as described in paragraph (c)(3)(ii)(B) of this section, is greater than ten percent below the

annual household income computed in accordance with paragraph (c)(3)(ii)(A), or if data described in paragraph (c)(1)(i) of this section is unavailable, the Exchange must attempt to verify the applicant's attestation of the tax filer's projected annual household income for the tax filer by—

(A) Using annualized data from the MAGI-based income sources specified in paragraph (c)(1)(ii) of this section;

(B) Using other electronic data sources that have been approved by HHS, based on evidence showing that such data sources are sufficiently accurate and offer less administrative complexity than paper verification; or

(C) If electronic data are unavailable or do not support an applicant's attestation, the Exchange must follow the procedures specified in § 155.315(f)(1) through (4).

(D) If, following the 90-day period described in paragraph (c)(3)(vi)(C) of this section, an applicant has not responded to a request for additional information from the Exchange and the data sources specified in paragraph (c)(1) of this section indicate that an applicant in the tax filer's family is eligible for Medicaid or CHIP, the Exchange must not provide the applicant with eligibility for advance payments of the premium tax credit, cost-sharing reductions, Medicaid, CHIP or the BHP, if a BHP is operating in the service area of the Exchange.

(E) If, at the conclusion of the period specified in paragraph (c)(3)(vi)(C) of this section, the Exchange remains unable to verify the applicant's attestation, the Exchange must determine the applicant's eligibility based on the information described in paragraph (c)(3)(ii)(A) of this section, notify the applicant of such determination in accordance with the notice requirements specified in § 155.310(g), and implement such determination in accordance with the effective dates specified in § 155.330(f).

(F) If, at the conclusion of the period specified in paragraph (c)(3)(vi)(C) of this section, the Exchange remains unable to verify the applicant's attestation for the tax filer and the information described in paragraph (c)(3)(ii)(A) of this section is unavailable, the Exchange must determine the tax filer ineligible for advance payments of the premium tax credit and cost-sharing reductions, notify the applicant of such determination in accordance with the notice requirement specified in § 155.310(g), and discontinue any advance payments of the premium tax credit and cost-sharing reductions in accordance with the effective dates specified in § 155.330(f).

(vii) For the purposes of this paragraph (c)(3), ''household income'' means household income as specified in section 36B(d)(2) of the Code.

(viii) For purposes of paragraph (c)(3) of this section, ''family size'' means family size as specified in section 36B(d)(1) of the Code.

(4) The Exchange must provide education and assistance to an applicant regarding the process specified in this paragraph.

(d) *Verification related to enrollment in an eligible employer-sponsored plan.* (1) Except as provided in paragraph (d)(2) of this section, the Exchange must verify whether an applicant who requested an eligibility determination for insurance affordability programs is enrolled in an eligible employer-sponsored plan or reasonably expects to be enrolled in an eligible employer-sponsored plan for the benefit year for which coverage is requested by accepting an applicant's attestation without further verification.

(2) If the Exchange finds that an applicant's attestation regarding enrollment in an eligible employer-sponsored plan is not reasonably compatible with other information provided by the applicant or in the records of the Exchange, the Exchange must utilize data obtained through electronic data sources to verify the attestation. If such data sources are unavailable or information in such data sources is not reasonably compatible with the applicant's attestation, the Exchange may request additional documentation to support the attestation within the procedures specified in § 155.315(f).

(e) *Verification related to eligibility for qualifying coverage in an eligible employer-sponsored plan.* (1) The Exchange must require an applicant to attest to an applicant's eligibility for qualifying coverage in an eligible employer-sponsored plan for the benefit year for which coverage is requested for the purposes of eligibility for advance payments of the premium tax credit and cost-sharing reductions, and to provide information identified in section 1411(b)(4) of the Affordable Care Act.

(2) The Exchange must verify whether an applicant is eligible for qualifying coverage in an eligible employer-sponsored plan for the purposes of eligibility for advance payments of the premium tax credit and cost-sharing reductions.

(f) *Additional verification related to immigration status for Medicaid and CHIP.* (1) For purposes of determining eligibility for Medicaid, the Exchange must verify whether an applicant who does not attest to being a citizen or a national has satisfactory immigration status to be eligible for Medicaid, as required by 42 CFR 435.406 and, if applicable under the State Medicaid plan, section 1903(v)(4) of the Act.

(2) For purposes of determining eligibility for CHIP, the Exchange must verify whether an applicant who does not attest to being a citizen or a national has satisfactory immigration status to be eligible for CHIP, in accordance with 42 CFR 457.320(b) and if applicable under the State Child Health Plan, section 2107(e)(1)(J) of the Act.

§ 155.330 Eligibility redetermination during a benefit year.

(a) *General requirement.* The Exchange must redetermine the eligibility of an enrollee in a QHP through the Exchange during the benefit year if it receives and verifies new information reported by an enrollee or identifies updated information through the data matching described in paragraph (d) of this section.

(b) *Requirement for individuals to report changes.* (1) Except as specified in paragraphs (b)(2) and (3) of this section, the Exchange must require an enrollee to report any change with respect to the eligibility standards specified in § 155.305 within 30 days of such change.

(2) The Exchange must not require an enrollee who did not request an eligibility determination for insurance affordability programs to report changes that affect eligibility for insurance affordability programs.

(3) The Exchange may establish a reasonable threshold for changes in income, such that an enrollee who experiences a change in income that is below the threshold is not required to report such change.

(4) The Exchange must allow an enrollee, or an application filer, on behalf of the enrollee, to report changes via the channels available for the submission of an application, as described in § 155.405(c).

(c) *Verification of reported changes.* The Exchange must—

(1) Verify any information reported by an enrollee in accordance with the processes specified in §§ 155.315 and 155.320 prior to using such information in an eligibility redetermination; and

(2) Provide periodic electronic notifications regarding the requirements for reporting changes and an enrollee's opportunity to report any changes as described in paragraph (b)(3) of this section, to an enrollee who has elected to receive electronic notifications,

unless he or she has declined to receive notifications under this paragraph (c)(2).

(d) *Periodic examination of data sources.* (1) The Exchange must periodically examine available data sources described in § 155.315(b)(1) and § 155.320(b) to identify the following changes:

(i) Death; and

(ii) Eligibility determinations for Medicare, Medicaid, CHIP, or the BHP, if a BHP is operating in the service area of the Exchange.

(2) *Flexibility.* The Exchange may make additional efforts to identify and act on changes that may affect an enrollee's eligibility for enrollment in a QHP through the Exchange or for insurance affordability programs, provided that such efforts—

(i) Would reduce the administrative costs and burdens on individuals while maintaining accuracy and minimizing delay, that it would not undermine coordination with Medicaid and CHIP, and that applicable requirements under §§ 155.260, 155.270, 155.315(i), and section 6103 of the Code with respect to the confidentiality, disclosure, maintenance, or use of such information will be met; and

(ii) Comply with the standards specified in paragraphs (e)(2) and (3) of this section.

(e) *Redetermination and notification of eligibility.* (1) *Enrollee-reported data.* If the Exchange verifies updated information reported by an enrollee, the Exchange must—

(i) Redetermine the enrollee's eligibility in accordance with the standards specified in § 155.305;

(ii) Notify the enrollee regarding the determination in accordance with the requirements specified in § 155.310(g); and

(iii) Notify the enrollee's employer, as applicable, in accordance with the requirements specified in § 155.310(h).

(2) *Data matching not regarding income, family size and family composition.* If the Exchange identifies updated information through the data matching taken in accordance with paragraph (d)(1) or through other data matching under paragraph (d)(2) of this section, with the exception of data matching related to income, the Exchange must—

(i) Notify the enrollee regarding the updated information, as well as the enrollee's projected eligibility determination after considering such information;

(ii) Allow an enrollee 30 days from the date of the notice to notify the Exchange that such information is inaccurate; and

(iii) If the enrollee responds contesting the updated information, proceed in accordance with § 155.315(f).

(iv) If the enrollee does not respond within the 30-day period specified in paragraph (e)(2)(ii), proceed in accordance with paragraphs (e)(1)(i) and (ii) of this section.

(3) *Data matching regarding income, family size and family composition.* If the Exchange identifies updated information regarding income, family size and composition through the data matching taken in accordance with paragraph (c)(2) of this section, the Exchange must—

(i) Follow procedures described in paragraph (e)(2)(i) and (ii) of this section; and

(ii) If the enrollee responds confirming the updated information or providing more up to date information, proceed in accordance with paragraphs (e)(1)(i) and (ii) of this section.

(iii) If the enrollee does not respond within the 30-day period specified in paragraph (e)(2)(ii) of this section, maintain the enrollee's existing eligibility determination without considering the updated information.

(f) *Effective dates.* (1) Except as specified in paragraphs (f)(2) or (3) of this section, the Exchange must implement changes resulting from a redetermination under this section on the first day of the month following the date of the notice described in paragraph (e)(1)(ii) of this section.

(2) The Exchange may determine a reasonable point in a month after which a change captured through a redetermination will not be effective until the first day of the month after the month specified in paragraph (f)(1) of this section. Such reasonable point in a month must be no earlier than the date described in § 155.420(b)(2).

(3) In the case of a redetermination that results in an enrollee being ineligible to continue his or her enrollment in a QHP through the Exchange, the Exchange must maintain his or her eligibility for enrollment in a QHP without advance payments of the premium tax credit and cost-sharing reductions, in accordance with the effective dates described in § 155.430(d)(3).

§ 155.335 Annual eligibility redetermination.

(a) *General requirement.* Except as specified in paragraph (l) of this section, the Exchange must redetermine the eligibility of an enrollee in a QHP through the Exchange on an annual basis.

(b) *Updated income and family size information.* In the case of an enrollee who requested an eligibility determination for insurance affordability programs in accordance with § 155.310(b), the Exchange must request updated tax return information, if the enrollee has authorized the request of such tax return information, and data regarding MAGI-based income as described in § 155.320(c)(1) for use in the enrollee's eligibility redetermination.

(c) *Notice to enrollee.* The Exchange must provide an enrollee with an annual redetermination notice including the following:

(1) The data obtained under paragraph (b) of this section, if applicable; and

(2) The data used in the enrollee's most recent eligibility determination; and

(3) The enrollee's projected eligibility determination for the following year, after considering any updated information described in paragraph (c)(1) of this section, including, if applicable, the amount of any advance payments of the premium tax credit and the level of any cost-sharing reductions or eligibility for Medicaid, CHIP or BHP.

(d) *Timing.* (1) For redeterminations under this section for coverage effective January 1, 2015, the Exchange must satisfy the notice provisions of paragraph (c) of this section and § 155.410(d) through a single, coordinated notice.

(2) For redeterminations under this section for coverage effective on or after January 1, 2017, the Exchange may send the notice specified in paragraph (c) of this section separately from the notice of annual open enrollment specified in § 155.410(d), provided that—

(i) The Exchange sends the notice specified in paragraph (c) of this section no earlier than the date of the notice of annual open enrollment specified in § 155.410(d); and

(ii) The timing of the notice specified in paragraph (c) of this section allows a reasonable amount of time for the enrollee to review the notice, provide a timely response, and for the Exchange to implement any changes in coverage elected during the annual open enrollment period.

(e) *Changes reported by enrollees.* (1) The Exchange must require an enrollee to report any changes with respect to the information listed in the notice described in paragraph (c) of this section within 30 days from the date of the notice.

(2) The Exchange must allow an enrollee, or an application filer, on behalf of the enrollee, to report changes via the channels available for the submission of an application, as described in § 155.405(c)(2).

(f) *Verification of reported changes.* The Exchange must verify any information reported by an enrollee under paragraph (e) of this section using the processes specified in § 155.315 and § 155.320, including the relevant provisions in those sections regarding inconsistencies, prior to using such information to determine eligibility.

(g) *Response to redetermination notice.* (1) The Exchange must require an enrollee, or an application filer, on behalf of the enrollee, to sign and return the notice described in paragraph (c) of this section.

(2) To the extent that an enrollee does not sign and return the notice described in paragraph (c) of this section within the 30-day period specified in paragraph (e) of this section, the Exchange must proceed in accordance with the procedures specified in paragraph (h)(1) of this section.

(h) *Redetermination and notification of eligibility.* (1) After the 30-day period specified in paragraph (e) of this section has elapsed, the Exchange must—

(i) Redetermine the enrollee's eligibility in accordance with the standards specified in § 155.305 using the information provided to the individual in the notice specified in paragraph (c), as supplemented with any information reported by the enrollee and verified by the Exchange in accordance with paragraphs (e) and (f) of this section;

(ii) Notify the enrollee in accordance with the requirements specified in § 155.310(g); and

(iii) If applicable, notify the enrollee's employer, in accordance with the requirements specified in § 155.310(h).

(2) If an enrollee reports a change with respect to the information provided in the notice specified in paragraph (c) of this section that the Exchange has not verified as of the end of the 30-day period specified in paragraph (e) of this section, the Exchange must redetermine the enrollee's eligibility after completing verification, as specified in paragraph (f) of this section.

(i) *Effective date of annual redetermination.* The Exchange must ensure that a redetermination under this section is effective on the first day of the coverage year following the year in which the Exchange provided the notice in paragraph (c) of this section, or in accordance with the rules specified in § 155.330(f) regarding effective dates, whichever is later.

(j) *Renewal of coverage.* If an enrollee remains eligible for coverage in a QHP upon annual redetermination, such enrollee will remain in the QHP selected the previous year unless such enrollee terminates coverage from such plan, including termination of coverage in connection with enrollment in a different QHP, in accordance with § 155.430.

(k) *Authorization of the release of tax data to support annual redetermination.* (1) The Exchange must have authorization from an enrollee in order to obtain updated tax return information described in paragraph (b) of this section for purposes of conducting an annual redetermination.

(2) The Exchange is authorized to obtain the updated tax return information described in paragraph (b) of this section for a period of no more than five years based on a single authorization, provided that—

(i) An individual may decline to authorize the Exchange to obtain updated tax return information; or

(ii) An individual may authorize the Exchange to obtain updated tax return information for fewer than five years; and

(iii) The Exchange must allow an individual to discontinue, change, or renew his or her authorization at any time.

(l) *Limitation on redetermination.* To the extent that an enrollee has requested an eligibility determination for insurance affordability programs in accordance with § 155.310(b) and the Exchange does not have an active authorization to obtain tax data as a part of the annual redetermination process, the Exchange must notify the enrollee in accordance with the timing described in paragraph (d) of this section. The Exchange may not proceed with the redetermination process described in paragraphs (c) and (e) through (j) of this section until such authorization has been obtained or the enrollee discontinues his or her request for an eligibility determination for insurance affordability programs in accordance with § 155.310(b).

§ 155.340 Administration of advance payments of the premium tax credit and cost-sharing reductions.

(a) *Requirement to provide information to enable advance payments of the premium tax credit and cost-sharing reductions.* In the event that the Exchange determines that a tax filer is eligible for advance payments of the premium tax credit, an applicant is eligible for cost-sharing reductions, or that such eligibility for such programs has changed, the Exchange must, simultaneously—

(1) Transmit eligibility and enrollment information to HHS necessary to enable HHS to begin, end, or change advance payments of the premium tax credit or cost-sharing reductions; and

(2) Notify and transmit information necessary to enable the issuer of the QHP to implement, discontinue the implementation, or modify the level of advance payments of the premium tax credit or cost-sharing reductions, as applicable, including:

(i) The dollar amount of the advance payment; and

(ii) The cost-sharing reductions eligibility category.

(b) *Requirement to provide information related to employer responsibility.* (1) In the event that the Exchange determines that an individual is eligible for advance payments of the premium tax credit or cost-sharing reductions based in part on a finding that an individual's employer does not provide minimum essential coverage, or provides minimum essential coverage that is unaffordable, within the standard of section 36B(c)(2)(C)(i) of the Code, or does not meet the minimum value requirement specified in section 36B(c)(2)(C)(ii) of the Code, the Exchange must transmit the individual's name and taxpayer identification number to HHS.

(2) If an enrollee for whom advance payments of the premium tax credit are made or who is receiving cost-sharing reductions notifies the Exchange that he or she has changed employers, the Exchange must transmit the enrollee's name and taxpayer identification number to HHS.

(3) In the event that an individual for whom advance payments of the premium tax credit are made or who is receiving cost-sharing reductions terminates coverage from a QHP through the Exchange during a benefit year, the Exchange must—

(i) Transmit the individual's name and taxpayer identification number, and the effective date of coverage termination, to HHS, which will transmit it to the Secretary of the Treasury; and,

(ii) Transmit the individual's name and the effective date of the termination of coverage to his or her employer.

(c) *Requirement to provide information related to reconciliation of advance payments of the premium tax credit.* The Exchange must comply with the requirements specified in section 36B(f)(3) of the Code regarding reporting to the IRS and to taxpayers.

(d) *Timeliness standard.* The Exchange must transmit all information required in accordance with paragraphs (a) and (b) of this section promptly and without undue delay.

§ 155.345 Coordination with Medicaid, CHIP, the Basic Health Program, and the Pre-existing Condition Insurance Plan.

(a) *Agreements.* The Exchange must enter into agreements with agencies administering Medicaid, CHIP, and the BHP as are necessary to fulfill the requirements of this subpart and provide copies of any such agreements to HHS upon request. Such agreements must include a clear delineation of the responsibilities of each program to—

(1) Minimize burden on individuals;

(2) Ensure prompt determinations of eligibility and enrollment in the appropriate program without undue delay, based on the date the application is submitted to or redetermination is initiated by the agency administering Medicaid, CHIP, or the BHP, or to the Exchange; and

(3) Ensure compliance with paragraphs (c), (d), (e), and (g) of this section.

(b) *Responsibilities related to individuals potentially eligible for Medicaid based on other information or through other coverage groups.* For an applicant who is not eligible for Medicaid based on the standards specified in § 155.305(c), the Exchange must assess the information provided by the applicant on his or her application to determine whether he or she is potentially eligible for Medicaid based on factors not otherwise considered in this subpart.

(c) *Individuals requesting additional screening.* The Exchange must notify an applicant of the opportunity to request a full determination of eligibility for Medicaid based on eligibility criteria that are not described in § 155.305(c), and provide such an opportunity. The Exchange must also make such notification to an enrollee and provide an enrollee such opportunity in any determination made in accordance with § 155.330 or § 155.335.

(d) *Notification of applicant and State Medicaid agency.* If an Exchange identifies an applicant as potentially eligible for Medicaid under paragraph (b) of this section or an applicant requests a full determination for Medicaid under paragraph (c) of this section, the Exchange must—

(1) Transmit all information provided on the application and any information obtained or verified by, the Exchange to the State Medicaid agency, promptly and without undue delay; and

(2) Notify the applicant of such transmittal.

(e) *Treatment of referrals to Medicaid on eligibility for advance payments of the premium tax credit and cost-sharing reductions.* The Exchange must consider an applicant who is described in paragraph (d) of this section and has not been determined eligible for Medicaid based on the standards specified in § 155.305(c) as ineligible for Medicaid for purposes of eligibility for advance payments of the premium tax credit or cost-sharing reductions until the State Medicaid agency notifies the Exchange that the applicant is eligible for Medicaid.

(f) *Special rule.* If the Exchange verifies that a tax filer's household income, as defined in section 36B(d)(2) of the Code, is less than 100 percent of the FPL for the benefit year for which coverage is requested, determines that the tax filer is not eligible for advance payments of the premium tax credit based on § 155.305(f)(2), and one or more applicants in the tax filer's household has been determined ineligible for Medicaid and CHIP based on income, the Exchange must—

(1) Provide the applicant with any information regarding income used in the Medicaid and CHIP eligibility determination; and

(2) Follow the procedures specified in § 155.320(c)(3).

(g) *Determination of eligibility for individuals submitting applications directly to an agency administering Medicaid, CHIP, or the BHP.* The Exchange, in consultation with the agencies administering Medicaid, CHIP, or the BHP, if a BHP is operating in the service area of the Exchange, must establish procedures to ensure that an eligibility determination for enrollment in a QHP, advance payments of the premium tax credit and cost-sharing reductions is performed when an application is submitted directly to an agency administering Medicaid, CHIP, or the BHP, if a BHP is operating in the service area of the Exchange. Under such procedures, the Exchange must—

(1) Accept, via secure electronic interface, all information provided on the application and any information obtained or verified by, the agency administering Medicaid, CHIP, or the BHP, if a BHP is operating in the service area of the Exchange, for the individual, and not require submission of another application;

(2) Not duplicate any eligibility and verification findings already made by the transmitting agency, to the extent such findings are made in accordance with this subpart;

(3) Not request information of documentation from the individual already provided to another insurance affordability program and included in the transmission of information provided on the application or other information transmitted from the other program;

(4) Determine the individual's eligibility for enrollment in a QHP, advance payments of the premium tax credit, and cost-sharing reductions, promptly and without undue delay, and in accordance with this subpart; and

(5) Provide for following a streamlined process for eligibility determinations regardless of the agency that initially received an application.

(h) *Standards for sharing information between the Exchange and the agencies administering Medicaid, CHIP, and the BHP.* (1) The Exchange must utilize a secure electronic interface to exchange data with the agencies administering Medicaid, CHIP, and the BHP, if a BHP is operating in the service area of the Exchange, including to verify whether an applicant for insurance affordability programs has been determined eligible for Medicaid, CHIP, or the BHP, as specified in § 155.320(b)(2), and for other functions required under this subpart.

(2) *Model agreements.* The Exchange may utilize any model agreements as established by HHS for the purpose of sharing data as described in this section.

(i) *Transition from the Pre-existing Condition Insurance Plan (PCIP).* The Exchange must follow procedures established in accordance with 45 CFR 152.45 to transition PCIP enrollees to the Exchange to ensure that there are no lapses in health coverage.

§ 155.350 Special eligibility standards and process for Indians.

(a) *Eligibility for cost-sharing reductions.* (1) The Exchange must determine an applicant who is an Indian eligible for cost-sharing reductions if he or she—

(i) Meets the requirements specified in § 155.305(a) and § 155.305(f);

(ii) Is expected to have a household income, as defined in section 36B(d)(2) of the Code, that does not exceed 300 percent of the FPL for the benefit year for which coverage is requested.

(2) The Exchange may only provide cost-sharing reductions to an individual who is an Indian if he or she is enrolled in a QHP through the Exchange.

(b) *Special cost-sharing rule for Indians regardless of income.* The Exchange must determine an applicant eligible for the special cost-sharing rule described in section 1402(d)(2) of the Affordable Care Act if he or she is an Indian, without requiring the applicant to request an eligibility determination for insurance affordability programs in accordance with § 155.310(b) in order to qualify for this rule.

(c) *Verification related to Indian status.* To the extent that an applicant attests that he or she is an Indian, the

Exchange must verify such attestation by—

(1) Utilizing any relevant documentation verified in accordance with § 155.315(f);

(2) Relying on any electronic data sources that are available to the Exchange and which have been approved by HHS for this purpose, based on evidence showing that such data sources are sufficiently accurate and offer less administrative complexity than paper verification; or

(3) To the extent that approved data sources are unavailable, an individual is not represented in available data sources, or data sources are not reasonably compatible with an applicant's attestation, the Exchange must follow the procedures specified in § 155.315(f) and verify documentation provided by the applicant in accordance with the standards for acceptable documentation provided in section 1903(x)(3)(B)(v) of the Social Security Act.

§ 155.355 Right to appeal.

Individual appeals. The Exchange must include the notice of the right to appeal and instructions regarding how to file an appeal in any eligibility determination notice issued to the applicant in accordance with § 155.310(g), § 155.330(e)(1)(ii), or § 155.335(h)(1)(ii).

Subpart E—Exchange Functions in the Individual Market: Enrollment in Qualified Health Plans

§ 155.400 Enrollment of qualified individuals into QHPs.

(a) *General requirements.* The Exchange must accept a QHP selection from an applicant who is determined eligible for enrollment in a QHP in accordance with subpart D, and must—

(1) Notify the issuer of the applicant's selected QHP; and

(2) Transmit information necessary to enable the QHP issuer to enroll the applicant.

(b) *Timing of data exchange.* The Exchange must:

(1) Send eligibility and enrollment information to QHP issuers and HHS promptly and without undue delay; and

(2) Establish a process by which a QHP issuer acknowledges the receipt of such information.

(c) *Records.* The Exchange must maintain records of all enrollments in QHP issuers through the Exchange.

(d) *Reconcile files.* The Exchange must reconcile enrollment information with QHP issuers and HHS no less than on a monthly basis.

§ 155.405 Single streamlined application.

(a) *The application.* The Exchange must use a single streamlined application to determine eligibility and to collect information necessary for:

(1) Enrollment in a QHP;

(2) Advance payments of the premium tax credit;

(3) Cost-sharing reductions; and

(4) Medicaid, CHIP, or the BHP, where applicable.

(b) *Alternative application.* If the Exchange seeks to use an alternative application, such application, as approved by HHS, must request the minimum information necessary for the purposes identified in paragraph (a) of this section.

(c) *Filing the single streamlined application.* The Exchange must—

(1) Accept the single streamlined application from an application filer;

(2) Provide the tools to file an application—

(i) Via an Internet Web site;

(ii) By telephone through a call center;

(iii) By mail; and

(iv) In person, with reasonable accommodations for those with disabilities, as defined by the Americans with Disabilities Act.

§ 155.410 Initial and annual open enrollment periods.

(a) *General requirements.* (1) The Exchange must provide an initial open enrollment period and annual open enrollment periods consistent with this section, during which qualified individuals may enroll in a QHP and enrollees may change QHPs.

(2) The Exchange may only permit a qualified individual to enroll in a QHP or an enrollee to change QHPs during the initial open enrollment period specified in paragraph (b) of this section, the annual open enrollment period specified in paragraph (e) of this section, or a special enrollment period described in § 155.420 of this subpart for which the qualified individual has been determined eligible.

(b) *Initial open enrollment period.* The initial open enrollment period begins October 1, 2013 and extends through March 31, 2014.

(c) *Effective coverage dates for initial open enrollment period.* (1) *Regular effective dates.* For a QHP selection received by the Exchange from a qualified individual—

(i) On or before December 15, 2013, the Exchange must ensure a coverage effective date of January 1, 2014;

(ii) Between the first and fifteenth day of any subsequent month during the initial open enrollment period, the Exchange must ensure a coverage effective date of the first day of the following month; and

(iii) Between the sixteenth and last day of the month for any month between December 2013 and March 31, 2014, the Exchange must ensure a coverage effective date of the first day of the second following month.

(2) *Option for earlier effective dates.* Subject to the Exchange demonstrating to HHS that all of its participating QHP issuers agree to effectuate coverage in a timeframe shorter than discussed in paragraphs (c)(1)(ii) and (iii) of this section, the Exchange may do one or both of the following for all applicable individuals:

(i) For a QHP selection received by the Exchange from a qualified individual in accordance with the dates specified in paragraph (c)(1)(ii) or (iii) of this section, the Exchange may provide a coverage effective date for a qualified individual earlier than specified in such paragraphs, provided that either—

(A) The qualified individual has not been determined eligible for advance payments of the premium tax credit or cost-sharing reductions; or

(B) The qualified individual pays the entire premium for the first partial month of coverage as well as all cost sharing, thereby waiving the benefit of advance payments of the premium tax credit and cost-sharing reduction payments until the first of the next month.

(ii) For a QHP selection received by the Exchange from a qualified individual on a date set by the Exchange after the fifteenth of the month for any month between December 2013 and March 31, 2014, the Exchange may provide a coverage effective date of the first of the following month.

(d) *Notice of annual open enrollment period.* Starting in 2014, the Exchange must provide a written annual open enrollment notification to each enrollee no earlier than September 1, and no later than September 30.

(e) *Annual open enrollment period.* For benefit years beginning on or after January 1, 2015, the annual open enrollment period begins October 15 and extends through December 7 of the preceding calendar year.

(f) *Effective date for coverage after the annual open enrollment period.* The Exchange must ensure coverage is effective as of the first day of the following benefit year for a qualified individual who has made a QHP selection during the annual open enrollment period.

(g) *Automatic enrollment.* The Exchange may automatically enroll qualified individuals, at such time and in such manner as HHS may specify, and subject to the Exchange demonstrating to HHS that it has good

cause to perform such automatic enrollments.

§ 155.420 Special enrollment periods.

(a) *General requirements.* The Exchange must provide special enrollment periods consistent with this section, during which qualified individuals may enroll in QHPs and enrollees may change QHPs.

(b) *Effective dates.* (1) *Regular effective dates.* Except as specified in paragraphs (b)(2) and (3) of this section, for a QHP selection received by the Exchange from a qualified individual—

(i) Between the first and the fifteenth day of any month, the Exchange must ensure a coverage effective date of the first day of the following month; and

(ii) Between the sixteenth and the last day of any month, the Exchange must ensure a coverage effective date of the first day of the second following month.

(2) *Special effective dates.* (i) In the case of birth, adoption or placement for adoption, the Exchange must ensure that coverage is effective on the date of birth, adoption, or placement for adoption, but advance payments of the premium tax credit and cost-sharing reductions, if applicable, are not effective until the first day of the following month, unless the birth, adoption, or placement for adoption occurs on the first day of the month; and

(ii) In the case of marriage, or in the case where a qualified individual loses minimum essential coverage, as described in paragraph (d)(1) of this section, the Exchange must ensure coverage is effective on the first day of the following month.

(3) *Option for earlier effective dates.* Subject to the Exchange demonstrating to HHS that all of its participating QHP issuers agree to effectuate coverage in a timeframe shorter than discussed in paragraph (b)(1) or (b)(2)(ii) of this section, the Exchange may do one or both of the following for all applicable individuals:

(i) For a QHP selection received by the Exchange from a qualified individual in accordance with the dates specified in paragraph (b)(1) or (b)(2)(ii) of this section, the Exchange may provide a coverage effective date for a qualified individual earlier than specified in such paragraphs, provided that either—

(A) The qualified individual has not been determined eligible for advance payments of the premium tax credit or cost-sharing reductions; or

(B) The qualified individual pays the entire premium for the first partial month of coverage as well as all cost sharing, thereby waiving the benefit of advance payments of the premium tax credit and cost-sharing reduction payments until the first of the next month.

(ii) For a QHP selection received by the Exchange from a qualified individual on a date set by the Exchange after the fifteenth of the month, the Exchange may provide a coverage effective date of the first of the following month.

(c) *Length of special enrollment periods.* Unless specifically stated otherwise herein, a qualified individual or enrollee has 60 days from the date of a triggering event to select a QHP.

(d) *Special enrollment periods.* The Exchange must allow qualified individuals and enrollees to enroll in or change from one QHP to another as a result of the following triggering events:

(1) A qualified individual or dependent loses minimum essential coverage;

(2) A qualified individual gains a dependent or becomes a dependent through marriage, birth, adoption or placement for adoption;

(3) An individual, who was not previously a citizen, national, or lawfully present individual gains such status;

(4) A qualified individual's enrollment or non-enrollment in a QHP is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Exchange or HHS, or its instrumentalities as evaluated and determined by the Exchange. In such cases, the Exchange may take such action as may be necessary to correct or eliminate the effects of such error, misrepresentation, or inaction;

(5) An enrollee adequately demonstrates to the Exchange that the QHP in which he or she is enrolled substantially violated a material provision of its contract in relation to the enrollee;

(6) An individual is determined newly eligible or newly ineligible for advance payments of the premium tax credit or has a change in eligibility for cost-sharing reductions, regardless of whether such individual is already enrolled in a QHP. The Exchange must permit individuals whose existing coverage through an eligible employer-sponsored plan will no longer be affordable or provide minimum value for his or her employer's upcoming plan year to access this special enrollment period prior to the end of his or her coverage through such eligible employer-sponsored plan;

(7) A qualified individual or enrollee gains access to new QHPs as a result of a permanent move;

(8) An Indian, as defined by section 4 of the Indian Health Care Improvement Act, may enroll in a QHP or change from one QHP to another one time per month; and

(9) A qualified individual or enrollee demonstrates to the Exchange, in accordance with guidelines issued by HHS, that the individual meets other exceptional circumstances as the Exchange may provide.

(e) *Loss of minimum essential coverage.* Loss of minimum essential coverage includes those circumstances described in 26 CFR 54.9801–6(a)(3)(i) through (iii). Loss of coverage does not include termination or loss due to—

(1) Failure to pay premiums on a timely basis, including COBRA premiums prior to expiration of COBRA coverage, or

(2) Situations allowing for a rescission as specified in 45 CFR 147.128.

§ 155.430 Termination of coverage.

(a) *General requirements.* The Exchange must determine the form and manner in which coverage in a QHP may be terminated.

(b) *Termination events.* (1) The Exchange must permit an enrollee to terminate his or her coverage in a QHP, including as a result of the enrollee obtaining other minimum essential coverage, with appropriate notice to the Exchange or the QHP.

(2) The Exchange may initiate termination of an enrollee's coverage in a QHP, and must permit a QHP issuer to terminate such coverage, in the following circumstances:

(i) The enrollee is no longer eligible for coverage in a QHP through the Exchange;

(ii) Non-payment of premiums for coverage of the enrollee, and

(A) The 3-month grace period required for individuals receiving advance payments of the premium tax credit has been exhausted as described in § 156.270(g); or,

(B) Any other grace period not described in paragraph (b)(2)(ii)(A) of this section has been exhausted;

(iii) The enrollee's coverage is rescinded in accordance with § 147.128 of this subtitle;

(iv) The QHP terminates or is decertified as described in § 155.1080; or

(v) The enrollee changes from one QHP to another during an annual open enrollment period or special enrollment period in accordance with § 155.410 or § 155.420.

(c) *Termination of coverage tracking and approval.* The Exchange must—

(1) Establish mandatory procedures for QHP issuers to maintain records of termination of coverage;

(2) Send termination information to the QHP issuer and HHS, promptly and without undue delay, at such time and in such manner as HHS may specify, in accordance with § 155.400(b).

(3) Require QHP issuers to make reasonable accommodations for all individuals with disabilities (as defined by the Americans with Disabilities Act) before terminating coverage for such individuals; and

(4) Retain records in order to facilitate audit functions.

(d) *Effective dates for termination of coverage.* (1) For purposes of this section, reasonable notice is defined as fourteen days from the requested effective date of termination.

(2) In the case of a termination in accordance with paragraph (b)(1) of this section, the last day of coverage is—

(i) The termination date specified by the enrollee, if the enrollee provides reasonable notice;

(ii) Fourteen days after the termination is requested by the enrollee, if the enrollee does not provide reasonable notice; or

(iii) On a date determined by the enrollee's QHP issuer, if the enrollee's QHP issuer is able to effectuate termination in fewer than fourteen days and the enrollee requests an earlier termination effective date.

(iv) If the enrollee is newly eligible for Medicaid, CHIP, or the BHP, if a BHP is operating in the service area of the Exchange, the last day of coverage is the day before such coverage begins.

(3) In the case of a termination in accordance with paragraph (b)(2)(i) of this section, the last day of coverage is the last day of the month following the month in which the notice described in § 155.330(e)(1)(ii) is sent by the Exchange unless the individual requests an earlier termination effective date per paragraph (b)(1) of this section.

(4) In the case of a termination in accordance with paragraph (b)(2)(ii)(A) of this section, the last day of coverage will be the last day of the first month of the 3-month grace period.

(5) In the case of a termination in accordance with paragraph (b)(2)(ii)(B) of this section, the last day of coverage should be consistent with existing State laws regarding grace periods.

(6) In the case of a termination in accordance with paragraph (b)(2)(v) of this section, the last day of coverage in an enrollee's prior QHP is the day before the effective date of coverage in his or her new QHP.

■ 4. Add subpart H to read as follows:

Subpart H—Exchange Functions: Small Business Health Options Program (SHOP)

Sec.

155.700 Standards for the establishment of a SHOP.
155.705 Functions of a SHOP.
155.710 Eligibility standards for SHOP.
155.715 Eligibility determination process for SHOP.
155.720 Enrollment of employees into QHPs under SHOP.
155.725 Enrollment periods under SHOP.
155.730 Application standards for SHOP.

Subpart H—Exchange Functions: Small Business Health Options Program (SHOP)

§ 155.700 Standards for the establishment of a SHOP.

(a) *General requirement.* An Exchange must provide for the establishment of a SHOP that meets the requirements of this subpart and is designed to assist qualified employers and facilitate the enrollment of qualified employees into qualified health plans.

(b) *Definition.* For the purposes of this subpart:

Group participation rule means a requirement relating to the minimum number of participants or beneficiaries that must be enrolled in relation to a specified percentage or number of eligible individuals or employees of an employer.

§ 155.705 Functions of a SHOP.

(a) *Exchange functions that apply to SHOP.* The SHOP must carry out all the required functions of an Exchange described in this subpart and in subparts C, E, and K of this part, except:

(1) Requirements related to individual eligibility determinations in subpart D of this part;

(2) Requirements related to enrollment of qualified individuals described in subpart E of this part;

(3) The requirement to issue certificates of exemption in accordance with § 155.200(b); and

(4) Requirements related to the payment of premiums by individuals, Indian tribes, tribal organizations and urban Indian organizations under § 155.240.

(b) *Unique functions of a SHOP.* The SHOP must also provide the following unique functions:

(1) *Enrollment and eligibility functions.* The SHOP must adhere to the requirements outlined in §§ 155.710, 155.715, 155.720, 155.725, and 155.730.

(2) *Employer choice requirements.* With regard to QHPs offered through the SHOP, the SHOP must allow a qualified employer to select a level of coverage as described in section 1302(d)(1) of the Affordable Care Act, in which all QHPs within that level are made available to the qualified employees of the employer.

(3) *SHOP options with respect to employer choice requirements.* With regard to QHPs offered through the SHOP, the SHOP may allow a qualified employer to make one or more QHPs available to qualified employees by a method other than the method described in paragraph (b)(2) of this section.

(4) *Premium aggregation.* The SHOP must perform the following functions related to premium payment administration:

(i) Provide each qualified employer with a bill on a monthly basis that identifies the employer contribution, the employee contribution, and the total amount that is due to the QHP issuers from the qualified employer;

(ii) Collect from each employer the total amount due and make payments to QHP issuers in the SHOP for all enrollees; and

(iii) Maintain books, records, documents, and other evidence of accounting procedures and practices of the premium aggregation program for each benefit year for at least 10 years.

(5) *QHP Certification.* With respect to certification of QHPs in the small group market, the SHOP must ensure each QHP meets the requirements specified in § 156.285 of this subchapter.

(6) *Rates and rate changes.* The SHOP must—

(i) Require all QHP issuers to make any change to rates at a uniform time that is either quarterly, monthly, or annually; and

(ii) Prohibit all QHP issuers from varying rates for a qualified employer during the employer's plan year.

(7) *QHP availability in merged markets.* If a State merges the individual market and the small group market risk pools in accordance with section 1312(c)(3) of the Affordable Care Act, the SHOP may permit a qualified employee to enroll in any QHP meeting the following requirements of the small group market:

(i) Deductible maximums described in section 1302(c) of the Affordable Care Act; and

(ii) Levels of coverage described in section 1302(d) of the Affordable Care Act.

(8) *QHP availability in unmerged markets.* If a State does not merge the individual and small group market risk pools, the SHOP must permit each qualified employee to enroll only in QHPs in the small group market.

(9) *SHOP expansion to large group market.* If a State elects to expand the SHOP to the large group market, a SHOP must allow issuers of health insurance coverage in the large group market in the State to offer QHPs in such market

through a SHOP beginning in 2017 provided that a large employer meets the qualified employer requirements other than that it be a small employer.

(10) *Participation rules.* The SHOP may authorize uniform group participation rules for the offering of health insurance coverage in the SHOP. If the SHOP authorizes a minimum participation rate, such rate must be based on the rate of employee participation in the SHOP, not on the rate of employee participation in any particular QHP or QHPs of any particular issuer.

(11) *Premium calculator.* In the SHOP, the premium calculator described in § 155.205(b)(6) must facilitate the comparison of available QHPs after the application of any applicable employer contribution in lieu of any advance payment of the premium tax credit and any cost-sharing reductions.

§ 155.710 Eligibility standards for SHOP.

(a) *General requirement.* The SHOP must permit qualified employers to purchase coverage for qualified employees through the SHOP.

(b) *Employer eligibility requirements.* An employer is a qualified employer eligible to purchase coverage through a SHOP if such employer—

(1) Is a small employer;

(2) Elects to offer, at a minimum, all full-time employees coverage in a QHP through a SHOP; and

(3) Either—

(i) Has its principal business address in the Exchange service area and offers coverage to all its full-time employees through that SHOP; or

(ii) Offers coverage to each eligible employee through the SHOP serving that employee's primary worksite.

(c) *Participating in multiple SHOPs.* If an employer meets the criteria in paragraph (b) of this section and makes the election described in (b)(3)(ii) of this section, a SHOP shall allow the employer to offer coverage to those employees whose primary worksite is in the SHOP's service area.

(d) *Continuing eligibility.* The SHOP must treat a qualified employer which ceases to be a small employer solely by reason of an increase in the number of employees of such employer as a qualified employer until the qualified employer otherwise fails to meet the eligibility criteria of this section or elects to no longer purchase coverage for qualified employees through the SHOP.

(e) *Employee eligibility requirements.* An employee is a qualified employee eligible to enroll in coverage through a SHOP if such employee receives an offer of coverage from a qualified employer.

§ 155.715 Eligibility determination process for SHOP.

(a) *General requirement.* Before permitting the purchase of coverage in a QHP, the SHOP must determine that the employer or individual who requests coverage is eligible in accordance with the requirements of § 155.710.

(b) *Applications.* The SHOP must accept a SHOP single employer application form from employers and the SHOP single employee application form from employees wishing to elect coverage through the SHOP, in accordance with the relevant standards of § 155.730.

(c) *Verification of eligibility.* For the purpose of verifying employer and employee eligibility, the SHOP—

(1) Must verify that an individual applicant is identified by the employer as an employee to whom the qualified employer has offered coverage and must otherwise accept the information attested to within the application unless the information is inconsistent with the employer-provided information;

(2) May establish, in addition to or in lieu of reliance on the application, additional methods to verify the information provided by the applicant on the applicable application;

(3) Must collect only the minimum information necessary for verification of eligibility in accordance with the eligibility standards described in § 155.710; and

(4) May not perform individual eligibility determinations described in sections 1411(b)(2) or 1411(c) of the Affordable Care Act.

(d) *Eligibility adjustment period.* (1) When the information submitted on the SHOP single employer application is inconsistent with the eligibility standards described in § 155.710, the SHOP must—

(i) Make a reasonable effort to identify and address the causes of such inconsistency, including through typographical or other clerical errors;

(ii) Notify the employer of the inconsistency;

(iii) Provide the employer with a period of 30 days from the date on which the notice described in paragraph (d)(1)(ii) of this section is sent to the employer to either present satisfactory documentary evidence to support the employer's application, or resolve the inconsistency; and

(iv) If, after the 30-day period described in paragraph (d)(1)(iii) of this section, the SHOP has not received satisfactory documentary evidence, the SHOP must—

(A) Notify the employer of its denial of eligibility in accordance with paragraph (e) of this section and of the employer's right to appeal such determination; and

(B) If the employer was enrolled pending the confirmation or verification of eligibility information, discontinue the employer's participation in the SHOP at the end of the month following the month in which the notice is sent.

(2) For an individual requesting eligibility to enroll in a QHP through the SHOP for whom the SHOP receives information on the application inconsistent with the employer provided information, the SHOP must—

(i) Make a reasonable effort to identify and address the causes of such inconsistency, including through typographical or other clerical errors;

(ii) Notify the individual of the inability to substantiate his or her employee status;

(iii) Provide the employee with a period of 30 days from the date on which the notice described in paragraph (d)(2)(ii) of this section is sent to the employee to either present satisfactory documentary evidence to support the employee's application, or resolve the inconsistency; and

(iv) If, after the 30-day period described in paragraph (d)(2)(iii) of this section, the SHOP has not received satisfactory documentary evidence, the SHOP must notify the employee of its denial of eligibility in accordance with paragraph (f) of this section.

(e) *Notification of employer eligibility.* The SHOP must provide an employer requesting eligibility to purchase coverage with a notice of approval or denial of eligibility and the employer's right to appeal such eligibility determination.

(f) *Notification of employee eligibility.* The SHOP must notify an employee seeking to enroll in a QHP offered through the SHOP of the determination by the SHOP whether the individual is eligible in accordance with § 155.710 and the employee's right to appeal such determination.

(g) *Notification of employer withdrawal from SHOP.* If a qualified employer ceases to purchase coverage through the SHOP, the SHOP must ensure that—

(1) Each QHP terminates the coverage of the employer's qualified employees enrolled in the QHP through the SHOP; and

(2) Each of the employer's qualified employees enrolled in a QHP through the SHOP is notified of the termination of coverage prior to such termination. Such notification must also provide information about other potential sources of coverage, including access to

individual market coverage through the Exchange.

§ 155.720 Enrollment of employees into QHPs under SHOP.

(a) *General requirements.* The SHOP must process the SHOP single employee applications of qualified employees to the applicable QHP issuers and facilitate the enrollment of qualified employees in QHPs. All references to QHPs in this section refer to QHPs offered through the SHOP.

(b) *Enrollment timeline and process.* The SHOP must establish a uniform enrollment timeline and process for all QHP issuers and qualified employers to follow, which includes the following activities that must occur before the effective date of coverage for qualified employees:

(1) Determination of employer eligibility for purchase of coverage in the SHOP as described in § 155.715;

(2) Qualified employer selection of QHPs offered through the SHOP to qualified employees, consistent with § 155.705(b)(2) and (3);

(3) Provision of a specific timeframe during which the qualified employer can select the level of coverage or QHP offering, as appropriate;

(4) Provision of a specific timeframe for qualified employees to provide relevant information to complete the application process;

(5) Determination and verification of employee eligibility for enrollment through the SHOP;

(6) Processing enrollment of qualified employees into selected QHPs; and

(7) Establishment of effective dates of employee coverage.

(c) *Transfer of enrollment information.* In order to enroll qualified employees of a qualified employer participating in the SHOP, the SHOP must—

(1) Transmit enrollment information on behalf of qualified employees to QHP issuers in accordance with the timeline and process described in paragraph (b) of this section; and

(2) Follow requirements set forth in § 155.400(c) of this part.

(d) *Payment.* The SHOP must—

(1) Follow requirements set forth in § 155.705(b)(4) of this part; and

(2) Terminate participation of qualified employers that do not comply with the process established in § 155.705(b)(4).

(e) *Notification of effective date.* The SHOP must ensure that a QHP issuer notifies a qualified employee enrolled in a QHP of the effective date of coverage consistent with § 156.260(b).

(f) *Records.* The SHOP must receive and maintain for at least 10 years records of enrollment in QHPs, including identification of—

(1) Qualified employers participating in the SHOP; and

(2) Qualified employees enrolled in QHPs.

(g) *Reconcile files.* The SHOP must reconcile enrollment information and employer participation information with QHPs on no less than a monthly basis.

(h) *Employee termination of coverage from a QHP.* If any employee terminates coverage from a QHP, the SHOP must notify the employee's employer.

(i) *Reporting requirement for tax administration purposes.* The SHOP must report to the IRS employer participation, employer contribution, and employee enrollment information in a time and format to be determined by HHS.

§ 155.725 Enrollment periods under SHOP.

(a) *General requirements.* The SHOP must—

(1) Adhere to the start of the initial open enrollment period set forth in § 155.410;

(2) Ensure that enrollment transactions are sent to QHP issuers and that such issuers adhere to coverage effective dates in accordance with § 156.260 of this subchapter; and

(3) Provide the special enrollment periods described in § 155.420 excluding paragraphs (d)(3) and (6).

(b) *Rolling enrollment in the SHOP.* The SHOP must permit a qualified employer to purchase coverage for its small group at any point during the year. The employer's plan year must consist of the 12-month period beginning with the qualified employer's effective date of coverage.

(c) *Annual employer election period.* The SHOP must provide qualified employers with a period of no less than 30 days prior to the completion of the employer's plan year and before the annual employee open enrollment period, in which the qualified employer may change its participation in the SHOP for the next plan year, including—

(1) The method by which the qualified employer makes QHPs available to qualified employees pursuant to § 155.705(b)(2) and (3);

(2) The employer contribution towards the premium cost of coverage;

(3) The level of coverage offered to qualified employees as described in § 155.705(b)(2) and (3); and

(4) The QHP or QHPs offered to qualified employees in accordance with § 155.705.

(d) *Annual employer election period notice.* The SHOP must provide notification to a qualified employer of the annual election period in advance of such period.

(e) *Annual employee open enrollment period.* The SHOP must establish a standardized annual open enrollment period of no less than 30 days for qualified employees prior to the completion of the applicable qualified employer's plan year and after that employer's annual election period.

(f) *Annual employee open enrollment period notice.* The SHOP must provide notification to a qualified employee of the annual open enrollment period in advance of such period.

(g) *Newly qualified employees.* The SHOP must provide an employee who becomes a qualified employee outside of the initial or annual open enrollment period an enrollment period to seek coverage in a QHP beginning on the first day of becoming a qualified employee.

(h) *Effective dates.* The SHOP must establish effective dates of coverage for qualified employees consistent with the effective dates of coverage described in § 155.720.

(i) *Renewal of coverage.* If a qualified employee enrolled in a QHP through the SHOP remains eligible for coverage, such employee will remain in the QHP selected the previous year unless—

(1) The qualified employee terminates coverage from such QHP in accordance with standards identified in § 155.430;

(2) The qualified employee enrolls in another QHP if such option exists; or

(3) The QHP is no longer available to the qualified employee.

§ 155.730 Application standards for SHOP.

(a) *General requirements.* Application forms used by the SHOP must meet the requirements set forth in this section.

(b) *Single employer application.* The SHOP must use a single application to determine employer eligibility and to collect information necessary for purchasing coverage. Such application must collect the following—

(1) Employer name and address of employer's locations;

(2) Number of employees;

(3) Employer Identification Number (EIN); and

(4) A list of qualified employees and their taxpayer identification numbers.

(c) *Single employee application.* The SHOP must use a single application for eligibility determination, QHP selection and enrollment for qualified employees and their dependents.

(d) *Model application.* The SHOP may use the model single employer application and the model single employee application provided by HHS.

(e) *Alternative employer and employee application.* The SHOP may use an alternative application if such

application is approved by HHS and collects the following:

(1) In the case of the employer application, the information in described in paragraph (b); and

(2) In the case of the employee application, the information necessary to establish eligibility of the employee as a qualified employee and to complete the enrollment of the qualified employee and any dependents to be enrolled.

(f) *Filing.* The SHOP must allow an employer to file the SHOP single employer application and employees to file the single employee application in the form and manner described in § 155.405(c).

(g) *Additional safeguards.* The SHOP may not provide to the employer any information collected on the employee application with respect to spouses or dependents other than the name, address, and birth date of the spouse or dependent.

■ 5. Subpart K is added to read as follows:

Subpart K—Exchange Functions: Certification of Qualified Health Plans

Sec.
155.1000 Certification standards for QHPs.
155.1010 Certification process for QHPs.
155.1020 QHP issuer rate and benefit information.
155.1040 Transparency in coverage.
155.1045 Accreditation timeline.
155.1050 Establishment of Exchange network adequacy standards.
155.1055 Service area of a QHP.
155.1065 Stand-alone dental plans.
155.1075 Recertification of QHPs.
155.1080 Decertification of QHPs.

Subpart K—Exchange Functions: Certification of Qualified Health Plans

§ 155.1000 Certification standards for QHPs.

(a) *Definition.* The following definition applies in this subpart:

Multi-State plan means a health plan that is offered in accordance with section 1334 of the Affordable Care Act.

(b) *General requirement.* The Exchange must offer only health plans which have in effect a certification issued or are recognized as plans deemed certified for participation in an Exchange as a QHP, unless specifically provided for otherwise.

(c) *General certification criteria.* The Exchange may certify a health plan as a QHP in the Exchange if—

(1) The health insurance issuer provides evidence during the certification process in § 155.1010 that it complies with the minimum certification requirements outlined in subpart C of part 156, as applicable; and

(2) The Exchange determines that making the health plan available is in the interest of the qualified individuals and qualified employers, except that the Exchange must not exclude a health plan—

(i) On the basis that such plan is a fee-for-service plan;

(ii) Through the imposition of premium price controls; or

(iii) On the basis that the health plan provides treatments necessary to prevent patients' deaths in circumstances the Exchange determines are inappropriate or too costly.

§ 155.1010 Certification process for QHPs.

(a) *Certification procedures.* The Exchange must establish procedures for the certification of QHPs consistent with § 155.1000(c).

(1) *Completion date.* The Exchange must complete the certification of the QHPs that will be offered during the open enrollment period prior to the beginning of such period, as outlined in § 155.410.

(2) *Ongoing compliance.* The Exchange must monitor the QHP issuers for demonstration of ongoing compliance with the certification requirements in § 155.1000(c).

(b) *Exchange recognition of plans deemed certified for participation in an Exchange.* Notwithstanding paragraph (a) of this section, an Exchange must recognize as certified QHPs:

(1) A multi-State plan certified by and under contract with the U.S. Office of Personnel Management.

(2) A CO–OP QHP as described in subpart F of part 156 and deemed as certified under § 156.520(e).

§ 155.1020 QHP issuer rate and benefit information.

(a) *Receipt and posting of rate increase justification.* The Exchange must ensure that a QHP issuer submits a justification for a rate increase for a QHP prior to the implementation of such an increase, except for multi-State plans, for which the U.S. Office of Personnel Management will provide a process for the submission of rate justifications. The Exchange must ensure that the QHP issuer has prominently posted the justification on its Web site as required under § 156.210. To ensure consumer transparency, the Exchange must also provide access to the justification on its Internet Web site described in § 155.205(b).

(b) *Rate increase consideration.* (1) The Exchange must consider rate increases in accordance with section 1311(e)(2) of the Affordable Care Act, which includes consideration of the following:

(i) A justification for a rate increase prior to the implementation of the increase;

(ii) Recommendations provided to the Exchange by the State in accordance with section 2794(b)(1)(B) of the PHS Act; and

(iii) Any excess of rate growth outside the Exchange as compared to the rate of such growth inside the Exchange.

(2) This paragraph does not apply to multi-State plans for which the U.S. Office of Personnel Management will provide a process for rate increase consideration.

(c) *Benefit and rate information.* The Exchange must receive the information described in this paragraph, at least annually, from QHP issuers for each QHP in a form and manner to be specified by HHS. Information about multi-State plans may be provided in a form and manner determined by the U.S. Office of Personnel Management. The information identified in this paragraph is:

(1) Rates;

(2) Covered benefits; and

(3) Cost-sharing requirements.

§ 155.1040 Transparency in coverage.

(a) *General requirement.* The Exchange must collect information relating to coverage transparency as described in § 156.220 of this subtitle from QHP issuers, and from multi-State plans in a time and manner determined by the U.S. Office of Personnel Management.

(b) *Use of plain language.* The Exchange must determine whether the information required to be submitted and made available under paragraph (a) of this section is provided in plain language.

(c) *Transparency of cost-sharing information.* The Exchange must monitor whether a QHP issuer has made cost-sharing information available in a timely manner upon the request of an individual as required by § 156.220(d) of this subtitle.

§ 155.1045 Accreditation timeline.

The Exchange must establish a uniform period following certification of a QHP within which a QHP issuer that is not already accredited must become accredited as required by § 156.275 of this subtitle, except for multi-State plans. The U.S. Office of Personnel Management will establish the accreditation period for multi-State plans.

§ 155.1050 Establishment of Exchange network adequacy standards.

(a) An Exchange must ensure that the provider network of each QHP meets the

standards specified in § 156.230 of this subtitle, except for multi-State plans.

(b) The U.S. Office of Personnel Management will ensure compliance with the standards specified in § 156.230 of this subtitle for multi-State plans.

(c) A QHP issuer in an Exchange may not be prohibited from contracting with any essential community provider designated under § 156.235(c) of this subtitle.

§ 155.1055 Service area of a QHP.

The Exchange must have a process to establish or evaluate the service areas of QHPs to ensure such service areas meet the following minimum criteria:

(a) The service area of a QHP covers a minimum geographical area that is at least the entire geographic area of a county, or a group of counties defined by the Exchange, unless the Exchange determines that serving a smaller geographic area is necessary, nondiscriminatory, and in the best interest of the qualified individuals and employers.

(b) The service area of a QHP has been established without regard to racial, ethnic, language, health status-related factors specified under section 2705(a) of the PHS Act, or other factors that exclude specific high utilizing, high cost or medically-underserved populations.

§ 155.1065 Stand-alone dental plans.

(a) *General requirements.* The Exchange must allow the offering of a limited scope dental benefits plan through the Exchange, if—

(1) The plan meets the requirements of section 9832(c)(2)(A) of the Code and 2791(c)(2)(A) of the PHS Act; and

(2) The plan covers at least the pediatric dental essential health benefit as defined in section 1302(b)(1)(J) of the Affordable Care Act, provided that, with respect to this benefit, the plan satisfies the requirements of section 2711 of the PHS Act; and

(3) The plan and issuer of such plan meets QHP certification standards, including § 155.1020(c), except for any certification requirement that cannot be met because the plan covers only the benefits described in paragraph (a)(2) of this section.

(b) *Offering options.* The Exchange may allow the dental plan to be offered—

(1) As a stand-alone dental plan; or

(2) In conjunction with a QHP.

(c) *Sufficient capacity.* An Exchange must consider the collective capacity of stand-alone dental plans during certification to ensure sufficient access to pediatric dental coverage.

(d) *QHP Certification standards.* If a plan described in paragraph (a) of this section is offered through an Exchange, another health plan offered through such Exchange must not fail to be treated as a QHP solely because the plan does not offer coverage of benefits offered through the stand-alone plan that are otherwise required under section 1302(b)(1)(J) of the Affordable Care Act.

§ 155.1075 Recertification of QHPs.

(a) *Recertification process.* Except with respect to multi-State plans and CO–OP QHPs, an Exchange must establish a process for recertification of QHPs that, at a minimum, includes a review of the general certification criteria as outlined in § 155.1000(c). Upon determining the recertification status of a QHP, the Exchange must notify the QHP issuer.

(b) *Timing.* The Exchange must complete the QHP recertification process on or before September 15 of the applicable calendar year.

§ 155.1080 Decertification of QHPs.

(a) *Definition.* The following definition applies to this section:

Decertification means the termination by the Exchange of the certification status and offering of a QHP.

(b) *Decertification process.* Except with respect to multi-State plans and CO–OP QHPs, the Exchange must establish a process for the decertification of QHPs, which, at a minimum, meet the requirements in this section.

(c) *Decertification by the Exchange.* The Exchange may at any time decertify a health plan if the Exchange determines that the QHP issuer is no longer in compliance with the general certification criteria as outlined in § 155.1000(c).

(d) *Appeal of decertification.* The Exchange must establish a process for the appeal of a decertification of a QHP.

(e) *Notice of decertification.* Upon decertification of a QHP, the Exchange must provide notice of decertification to all affected parties, including:

(1) The QHP issuer;

(2) Exchange enrollees in the QHP who must receive information about a special enrollment period, as described in § 155.420;

(3) HHS; and

(4) The State department of insurance.

PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

■ 6. The authority citation for part 156 continues to read as follows:

Authority: Title I of the Affordable Care Act, Sections 1301–1304, 1311–1312, 1321, 1322, 1324, 1334, 1341–1343, and 1401–1402, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18042).

■ 7. Revise the part 156 heading to read as set forth above.

■ 8. Add subpart A to read as follows:

Subpart A—General Provisions

Sec.
156.10 Basis and scope.
156.20 Definitions.
156.50 Financial support.

Subpart A—General Provisions

§ 156.10 Basis and scope.

(a) *Basis.* (1) This part is based on the following sections of title I of the Affordable Care Act:

(i) 1301. QHP defined.

(ii) 1302. Essential health benefits requirements.

(iii) 1303. Special rules.

(iv) 1304. Related definitions.

(v) 1311. Affordable choices of health benefit plans.

(vi) 1312. Consumer choice.

(vii) 1313. Financial integrity.

(viii) 1321. State flexibility in operation and enforcement of Exchanges and related requirements.

(ix) 1322. Federal program to assist establishment and operation of nonprofit, member-run health insurance issuers.

(x) 1331. State flexibility to establish Basic Health Programs for low-income individuals not eligible for Medicaid.

(xi) 1334. Multi-State plans.

(xii) 1402. Reduced cost-sharing for individuals enrolling in QHPs.

(xiii) 1411. Procedures for determining eligibility for Exchange participation, advance premium tax credits and reduced cost sharing, and individual responsibility exemptions.

(xiv) 1412. Advance determination and payment of premium tax credits and cost-sharing reductions.

(xv) 1413. Streamlining of procedures for enrollment through an Exchange and State, Medicaid, CHIP, and health subsidy programs.

(2) This part is based on section 1150A, Pharmacy Benefit Managers Transparency Requirements, of title I of the Act:

(b) *Scope.* This part establishes standards for QHPs under Exchanges, and addresses other health insurance issuer requirements.

§ 156.20 Definitions.

The following definitions apply to this part, unless the context indicates otherwise:

Applicant has the meaning given to the term in § 155.20 of this subchapter.

Benefit design standards means coverage that provides for all of the following:

(1) The essential health benefits as described in section 1302(b) of the Affordable Care Act;

(2) Cost-sharing limits as described in section 1302(c) of the Affordable Care Act; and

(3) A bronze, silver, gold, or platinum level of coverage as described in section 1302(d) of the Affordable Care Act, or is a catastrophic plan as described in section 1302(e) of the Affordable Care Act.

Benefit year has the meaning given to the term in § 155.20 of this subtitle.

Cost-sharing has the meaning given to the term in § 155.20 of this subtitle.

Cost-sharing reductions has the meaning given to the term in § 155.20 of this subtitle.

Group health plan has the meaning given to the term in § 144.103 of this subtitle.

Health insurance coverage has the meaning given to the term in § 144.103 of this subtitle.

Health insurance issuer or issuer has the meaning given to the term in § 144.103 of this subtitle.

Level of coverage means one of four standardized actuarial values as defined by section 1302(d)(2) of the Affordable Care Act of plan coverage.

Plan year has the meaning given to the term in § 155.20 of this subchapter.

Qualified employer has the meaning given to the term in § 155.20 of this subchapter.

Qualified health plan has the meaning given to the term in § 155.20 of this subchapter.

Qualified health plan issuer has the meaning given to the term in § 155.20 of this subchapter.

Qualified individual has the meaning given to the term in § 155.20 of this subchapter.

§ 156.50 Financial support.

(a) *Definitions.* The following definitions apply for the purposes of this section:

Participating issuer means any issuer offering a plan that participates in the specific function that is funded by user fees. This term may include: health insurance issuers, QHP issuers, issuers of multi-State plans (as defined in § 155.1000(a) of this subchapter), issuers of stand-alone dental plans (as described in § 155.1065 of this subtitle), or other issuers identified by an Exchange.

(b) *Requirement for Exchanges user fees.* A participating issuer must remit user fee payments, or any other payments, charges, or fees, if assessed by the Federally-facilitated Exchange under 31 U.S.C. 9701 or a State-based Exchange under § 155.160 of this subchapter.

■ 9. Add subpart C to read as follows:

Subpart C—Qualified Health Plan Minimum Certification Standards

Sec.
156.200 QHP issuer participation standards.
156.210 QHP rate and benefit information.
156.220 Transparency in coverage.
156.225 Marketing and Benefit Design of QHPs.
156.230 Network adequacy standards.
156.235 Essential community providers.
156.245 Treatment of direct primary care medical homes.
156.250 Health plan applications and notices.
156.255 Rating variations.
156.260 Enrollment periods for qualified individuals.
156.265 Enrollment process for qualified individuals.
156.270 Termination of coverage for qualified individuals.
156.275 Accreditation of QHP issuers.
156.280 Segregation of funds for abortion services.
156.285 Additional standards specific to SHOP.
156.290 Non-renewal and decertification of QHPs.
156.295 Prescription drug distribution and cost reporting.

Subpart C—Qualified Health Plan Minimum Certification Standards

§ 156.200 QHP issuer participation standards.

(a) *General requirement.* In order to participate in an Exchange, a health insurance issuer must have in effect a certification issued or recognized by the Exchange to demonstrate that each health plan it offers in the Exchange is a QHP.

(b) *QHP issuer requirement.* A QHP issuer must—

(1) Comply with the requirements of this subpart with respect to each of its QHPs on an ongoing basis;

(2) Comply with Exchange processes, procedures, and requirements set forth in accordance with subpart K of part 155 and, in the small group market, § 155.705 of this subchapter;

(3) Ensure that each QHP complies with benefit design standards, as defined in § 156.20;

(4) Be licensed and in good standing to offer health insurance coverage in each State in which the issuer offers health insurance coverage;

(5) Implement and report on a quality improvement strategy or strategies consistent with the standards of section 1311(g) of the Affordable Care Act, disclose and report information on health care quality and outcomes described in sections 1311(c)(1)(H) and (I) of the Affordable Care Act, and implement appropriate enrollee satisfaction surveys consistent with section 1311(c)(4) of the Affordable Care Act;

(6) Pay any applicable user fees assessed under § 156.50; and

(7) Comply with the standards related to the risk adjustment program under 45 CFR part 153.

(c) *Offering requirements.* A QHP issuer must offer through the Exchange:

(1) At least one QHP in the silver coverage level and at least one QHP in the gold coverage level as described in section 1302(d)(1) of the Affordable Care Act; and,

(2) A child-only plan at the same level of coverage, as described in section 1302(d)(1) of the Affordable Care Act, as any QHP offered through the Exchange to individuals who, as of the beginning of the plan year, have not attained the age of 21.

(d) *State requirements.* A QHP issuer certified by an Exchange must adhere to the requirements of this subpart and any provisions imposed by the Exchange, or a State in connection with its Exchange, that are conditions of participation or certification with respect to each of its QHPs.

(e) *Non-discrimination.* A QHP issuer must not, with respect to its QHP, discriminate on the basis of race, color, national origin, disability, age, sex, gender identity or sexual orientation.

§ 156.210 QHP rate and benefit information.

(a) *General rate requirement.* A QHP issuer must set rates for an entire benefit year, or for the SHOP, plan year.

(b) *Rate and benefit submission.* A QHP issuer must submit rate and benefit information to the Exchange.

(c) *Rate justification.* A QHP issuer must submit to the Exchange a justification for a rate increase prior to the implementation of the increase. A QHP issuer must prominently post the justification on its Web site.

§ 156.220 Transparency in coverage.

(a) *Required information.* A QHP issuer must provide the following information in accordance with the standards in paragraph (b) of this section:

(1) Claims payment policies and practices;

(2) Periodic financial disclosures;

(3) Data on enrollment;

(4) Data on disenrollment;

(5) Data on the number of claims that are denied;

(6) Data on rating practices;

(7) Information on cost-sharing and payments with respect to any out-of-network coverage; and

(8) Information on enrollee rights under title I of the Affordable Care Act.

(b) *Reporting requirement.* A QHP issuer must submit, in an accurate and timely manner, to be determined by HHS, the information described in paragraph (a) of this section to the Exchange, HHS and the State insurance commissioner, and make the information described in paragraph (a) of this section available to the public.

(c) *Use of plain language.* A QHP issuer must make sure that the information submitted under paragraph (b) is provided in plain language as defined under § 155.20 of this subtitle.

(d) *Enrollee cost sharing transparency.* A QHP issuer must make available the amount of enrollee cost sharing under the individual's plan or coverage with respect to the furnishing of a specific item or service by a participating provider in a timely manner upon the request of the individual. At a minimum, such information must be made available to such individual through an Internet Web site and such other means for individuals without access to the Internet.

§ 156.225 Marketing and Benefit Design of QHPs.

A QHP issuer and its officials, employees, agents and representatives must—

(a) *State law applies.* Comply with any applicable State laws and regulations regarding marketing by health insurance issuers; and

(b) *Non-discrimination.* Not employ marketing practices or benefit designs that will have the effect of discouraging the enrollment of individuals with significant health needs in QHPs.

§ 156.230 Network adequacy standards.

(a) *General requirement.* A QHP issuer must ensure that the provider network of each of its QHPs, as available to all enrollees, meets the following standards—

(1) Includes essential community providers in accordance with § 156.235;

(2) Maintains a network that is sufficient in number and types of providers, including providers that specialize in mental health and substance abuse services, to assure that all services will be accessible without unreasonable delay; and,

(3) Is consistent with the network adequacy provisions of section 2702(c) of the PHS Act.

(b) *Access to provider directory.* A QHP issuer must make its provider directory for a QHP available to the Exchange for publication online in accordance with guidance from the Exchange and to potential enrollees in hard copy upon request. In the provider directory, a QHP issuer must identify providers that are not accepting new patients.

§ 156.235 Essential community providers.

(a) *General requirement.* (1) A QHP issuer must have a sufficient number and geographic distribution of essential community providers, where available, to ensure reasonable and timely access to a broad range of such providers for low-income, medically underserved individuals in the QHP's service area, in accordance with the Exchange's network adequacy standards.

(2) A QHP issuer that provides a majority of covered professional services through physicians employed by the issuer or through a single contracted medical group may instead comply with the alternate standard described in paragraph (b) of this section.

(3) Nothing in this requirement shall be construed to require any QHP to provide coverage for any specific medical procedure provided by the essential community provider.

(b) *Alternate standard.* A QHP issuer described in paragraph (a)(2) of this section must have a sufficient number and geographic distribution of employed providers and hospital facilities, or providers of its contracted medical group and hospital facilities to ensure reasonable and timely access for low-income, medically underserved individuals in the QHP's service area, in accordance with the Exchange's network adequacy standards.

(c) *Definition.* Essential community providers are providers that serve predominantly low-income, medically underserved individuals, including providers that meet the criteria of paragraph (c)(1) or (2) of this section, and providers that met the criteria under paragraph (c)(1) or (2) of this section on the publication date of this regulation unless the provider lost its status under paragraph (c)(1) or (2) of this section thereafter as a result of violating Federal law:

(1) Health care providers defined in section 340B(a)(4) of the PHS Act; and

(2) Providers described in section 1927(c)(1)(D)(i)(IV) of the Act as set forth by section 221 of Public Law 111–8.

(d) *Payment rates.* Nothing in paragraph (a) of this section shall be construed to require a QHP issuer to contract with an essential community provider if such provider refuses to accept the generally applicable payment rates of such issuer.

(e) *Payment of federally-qualified health centers.* If an item or service covered by a QHP is provided by a federally-qualified health center (as defined in section 1905(l)(2)(B) of the Act) to an enrollee of a QHP, the QHP issuer must pay the federally-qualified health center for the item or service an amount that is not less than the amount of payment that would have been paid to the center under section 1902(bb) of the Act for such item or service. Nothing in this paragraph (e) would preclude a QHP issuer and federally-qualified health center from mutually agreeing upon payment rates other than those that would have been paid to the center under section 1902(bb) of the Act, as long as such mutually agreed upon rates are at least equal to the generally applicable payment rates of the issuer indicated in paragraph (d) of this section.

§ 156.245 Treatment of direct primary care medical homes.

A QHP issuer may provide coverage through a direct primary care medical home that meets criteria established by HHS, so long as the QHP meets all requirements that are otherwise applicable and the services covered by the direct primary care medical home are coordinated with the QHP issuer.

§ 156.250 Health plan applications and notices.

QHP issuers must provide all applications and notices to enrollees in accordance with the standards described in § 155.230(b) of this subtitle.

§ 156.255 Rating variations.

(a) *Rating areas.* A QHP issuer, including an issuer of a multi-State plan, may vary premiums by the geographic rating area established under section 2701(a)(2) of the PHS Act.

(b) *Same premium rates.* A QHP issuer must charge the same premium rate without regard to whether the plan is offered through an Exchange, or whether the plan is offered directly from the issuer or through an agent.

§ 156.260 Enrollment periods for qualified individuals.

(a) *Individual market requirement.* A QHP issuer must:

(1) Enroll a qualified individual during the initial and annual open enrollment periods described in § 155.410(b) and (e) of this subchapter, and abide by the effective dates of coverage established by the Exchange in accordance with § 155.410(c) and (f) of this subchapter; and

(2) Make available, at a minimum, special enrollment periods described in § 155.420(d) of this subchapter, for QHPs and abide by the effective dates of coverage established by the Exchange in accordance with § 155.420(b) of this subchapter.

(b) *Notification of effective date.* A QHP issuer must notify a qualified individual of his or her effective date of coverage.

§ 156.265 Enrollment process for qualified individuals.

(a) *General requirement.* A QHP issuer must process enrollment in accordance with this section.

(b) *Enrollment through the Exchange for the individual market.* (1) A QHP issuer must enroll a qualified individual only if the Exchange—

(i) Notifies the QHP issuer that the individual is a qualified individual; and

(ii) Transmits information to the QHP issuer as provided in § 155.400(a) of this subchapter.

(2) If an applicant initiates enrollment directly with the QHP issuer for enrollment through the Exchange, the QHP issuer must either—

(i) Direct the individual to file an application with the Exchange in accordance with § 155.310, or

(ii) Ensure the applicant received an eligibility determination for coverage through the Exchange through the Exchange Internet Web site.

(c) *Acceptance of enrollment information.* A QHP issuer must accept enrollment information consistent with the privacy and security requirements established by the Exchange in accordance with § 155.260 and in an electronic format that is consistent with § 155.270.

(d) *Premium payment.* A QHP issuer must follow the premium payment process established by the Exchange in accordance with § 155.240.

(e) *Enrollment information package.* A QHP issuer must provide new enrollees an enrollment information package that is compliant with accessibility and readability standards established in § 155.230(b).

(f) *Enrollment reconciliation.* A QHP issuer must reconcile enrollment files with the Exchange no less than once a month in accordance with § 155.400(d).

(g) *Enrollment acknowledgement.* A QHP issuer must acknowledge receipt of enrollment information transmitted from the Exchange in accordance with Exchange standards established in accordance with § 155.400(b)(2) of this subchapter.

§ 156.270 Termination of coverage for qualified individuals.

(a) *General requirement.* A QHP issuer may only terminate coverage as permitted by the Exchange in accordance with § 155.430(b) of this subchapter.

(b) *Termination of coverage notice requirement.* If an enrollee's coverage in a QHP is terminated for any reason, the QHP issuer must:

(1) Provide the enrollee with a notice of termination of coverage that includes the reason for termination at least 30 days prior to the last day of coverage, consistent with the effective date established by the Exchange in accordance with § 155.430(d) of this subchapter.

(2) Notify the Exchange of the termination effective date and reason for termination.

(c) *Termination of coverage due to non-payment of premium.* A QHP issuer must establish a standard policy for the termination of coverage of enrollees due to non-payment of premium as permitted by the Exchange in § 155.430(b)(2)(ii) of this subchapter. This policy for the termination of coverage:

(1) Must include the grace period for enrollees receiving advance payments of the premium tax credits as described in paragraph (d) of this section; and

(2) Must be applied uniformly to enrollees in similar circumstances.

(d) *Grace period for recipients of advance payments of the premium tax credit.* A QHP issuer must provide a grace period of three consecutive months if an enrollee receiving advance payments of the premium tax credit has previously paid at least one full month's premium during the benefit year. During the grace period, the QHP issuer must:

(1) Pay all appropriate claims for services rendered to the enrollee during the first month of the grace period and may pend claims for services rendered to the enrollee in the second and third months of the grace period;

(2) Notify HHS of such non-payment; and,

(3) Notify providers of the possibility for denied claims when an enrollee is in the second and third months of the grace period.

(e) *Advance payments of the premium tax credit.* For the 3-month grace period described in paragraph (d) of this section, a QHP issuer must:

(1) Continue to collect advance payments of the premium tax credit on behalf of the enrollee from the Department of the Treasury.

(2) Return advance payments of the premium tax credit paid on the behalf of such enrollee for the second and third months of the grace period if the enrollee exhausts the grace period as described in paragraph (g) of this section.

(f) *Notice of non-payment of premiums.* If an enrollee is delinquent on premium payment, the QHP issuer must provide the enrollee with notice of such payment delinquency.

(g) *Exhaustion of grace period.* If an enrollee receiving advance payments of the premium tax credit exhausts the 3-month grace period in paragraph (d) of this section without paying all outstanding premiums, the QHP issuer must terminate the enrollee's coverage on the effective date described in § 155.430(d)(4) of this subchapter, provided that the QHP issuer meets the notice requirement specified in paragraph (b) of this section.

(h) *Records of termination of coverage.* QHP issuers must maintain records in accordance with Exchange standards established in accordance with § 155.430(c) of this subchapter.

(i) *Effective date of termination of coverage.* QHP issuers must abide by the termination of coverage effective dates described in § 155.430(d) of this subchapter.

§ 156.275 Accreditation of QHP issuers.

(a) *General requirement.* A QHP issuer must:

(1) Be accredited on the basis of local performance of its QHPs in the following categories by an accrediting entity recognized by HHS:

(i) Clinical quality measures, such as the Healthcare Effectiveness Data and Information Set;

(ii) Patient experience ratings on a standardized CAHPS survey;

(iii) Consumer access;

(iv) Utilization management;

(v) Quality assurance;

(vi) Provider credentialing;

(vii) Complaints and appeals;

(viii) Network adequacy and access; and

(ix) Patient information programs, and

(2) Authorize the accrediting entity that accredits the QHP issuer to release to the Exchange and HHS a copy of its most recent accreditation survey, together with any survey-related information that HHS may require, such as corrective action plans and summaries of findings.

(b) *Timeframe for accreditation.* A QHP issuer must be accredited within the timeframe established by the Exchange in accordance with § 155.1045 of this subchapter. The QHP issuer must maintain accreditation so long as the QHP issuer offers QHPs.

§ 156.280 Segregation of funds for abortion services.

(a) *State opt-out of abortion coverage.* A QHP issuer must comply with a State law that prohibits abortion coverage in QHPs.

(b) *Termination of opt out.* A QHP issuer may provide coverage of abortion services through the Exchange in a State described in paragraph (a) of this section if the State repeals such law.

(c) *Voluntary choice of coverage of abortion services.* Notwithstanding any other provision of title I of the Affordable Care Act (or any other amendment made under that title):

(1) Nothing in title I of the Affordable Care Act (or any amendments by that title) shall be construed to require a QHP issuer to provide coverage of services described in paragraph (d) of this section as part of its essential health benefits, as described in section 1302(b) of the Affordable Care Act, for any plan year.

(2) Subject to paragraphs (a) and (b) of this section, the QHP issuer must determine whether or not the QHP provides coverage of services described in paragraph (d) of this section as part of such benefits for the plan year.

(d) *Abortion services.* (1) *Abortions for which public funding is prohibited.* The services described in this paragraph are abortion services for which the expenditure of Federal funds appropriated for HHS is not permitted, based on the law in effect 6 months before the beginning of the plan year involved.

(2) *Abortions for which public funding is allowed.* The services described in this paragraph are abortion services for which the expenditure of Federal funds appropriated for HHS is permitted, based on the law in effect 6 months before the beginning of the plan year involved.

(e) *Prohibition on the use of Federal funds.* (1) If a QHP provides coverage of services described in paragraph (d)(1) of this section, the QHP issuer must not use any amount attributable to any of the following for the purposes of paying for such services:

(i) The credit under section 36B of the Code and the amount (if any) of the advance payment of the credit under section 1412 of the Affordable Care Act;

(ii) Any cost-sharing reduction under section 1402 of the Affordable Care Act and the amount (if any) of the advance payments of the reduction under section 1412 of the Affordable Care Act.

(2) *Establishment of allocation accounts.* In the case of a QHP to which paragraph (e)(1) of this section applies, the QHP issuer must:

(i) Collect from each enrollee in the QHP (without regard to the enrollee's age, sex, or family status) a separate payment for each of the following:

(A) An amount equal to the portion of the premium to be paid directly by the enrollee for coverage under the QHP of services other than services described in (d)(1) of this section (after reductions for credits and cost-sharing reductions described in paragraph (e)(1) of this section); and

(B) An amount equal to the actuarial value of the coverage of services described in paragraph (d)(1) of this section.

(ii) Deposit all such separate payments into separate allocation accounts as provided in paragraph (e)(3) of this section. In the case of an enrollee whose premium for coverage under the QHP is paid through employee payroll deposit, the separate payments required under this subparagraph shall each be paid by a separate deposit.

(3) *Segregation of funds.* (i) The QHP issuer to which paragraph (e)(1) of this section applies must establish allocation accounts described in paragraph (e)(3)(ii) of this section for enrollees receiving the amounts described in paragraph (e)(1) of this section.

(ii) *Allocation accounts.* The QHP issuer to which paragraph (e)(1) of this section applies must deposit:

(A) All payments described in paragraph (e)(2)(i)(A) of this section into a separate account that consists solely of such payments and that is used exclusively to pay for services other than the services described in paragraph (d)(1) of this section;

(B) All payments described in paragraph (e)(2)(i)(B) of this section into a separate account that consists solely of such payments and that is used exclusively to pay for services described in paragraph (d)(1) of this section.

(4) *Actuarial value.* The QHP issuer must estimate the basic per enrollee, per month cost, determined on an average actuarial basis, for including coverage under the QHP of services described in paragraph (d)(1) of this section. In making such an estimate, the QHP issuer:

(i) May take into account the impact on overall costs of the inclusion of such coverage, but may not take into account any cost reduction estimated to result from such services, including prenatal care, delivery, or postnatal care;

(ii) Must estimate such costs as if such coverage were included for the entire population covered; and

(iii) May not estimate such a cost at less than one dollar per enrollee, per month.

(5) *Ensuring compliance with segregation requirements.* (i) Subject to paragraph (e)(5)(iv) of this section, the QHP issuer must comply with the efforts or direction of the State health insurance commissioner to ensure compliance with this section through the segregation of QHP funds in accordance with applicable provisions of generally accepted accounting requirements, circulars on funds management of the Office of Management and Budget and guidance on accounting of the Government Accountability Office.

(ii) Each QHP issuer that participates in an Exchange and offers coverage for services described in paragraph (d)(1) of this section should, as a condition of participating in an Exchange, submit a plan that details its process and methodology for meeting the requirements of section 1303(b)(2)(C), (D), and (E) (hereinafter, ''segregation plan'') to the State health insurance commissioner. The segregation plan should describe the QHP issuer's financial accounting systems, including appropriate accounting documentation and internal controls, that would ensure the segregation of funds required by section 1303(b)(2)(C), (D), and (E), and should include:

(A) The financial accounting systems, including accounting documentation and internal controls, that would ensure the appropriate segregation of payments received for coverage of services described in paragraph (d)(1) of this section from those received for coverage of all other services;

(B) The financial accounting systems, including accounting documentation and internal controls, that would ensure that all expenditures for services described in paragraph (d)(1) of this section are reimbursed from the appropriate account; and

(C) An explanation of how the QHP issuer's systems, accounting documentation, and controls meet the requirements for segregation accounts under the law.

(iii) Each QHP issuer participating in the Exchange must provide to the State insurance commissioner an annual assurance statement attesting that the plan has complied with section 1303 of the Affordable Care Act and applicable regulations.

(iv) Nothing in this clause shall prohibit the right of an individual or QHP issuer to appeal such action in courts of competent jurisdiction.

(f) *Rules relating to notice.* (1) *Notice.* A QHP that provides for coverage of services in paragraph (d)(1) of this section, must provide a notice to enrollees, only as part of the summary

of benefits and coverage explanation, at the time of enrollment, of such coverage.

(2) *Rules relating to payments.* The notice described in paragraph (f)(1) of this section, any advertising used by the QHP issuer with respect to the QHP, any information provided by the Exchange, and any other information specified by HHS must provide information only with respect to the total amount of the combined payments for services described in paragraph (d)(1) of this section and other services covered by the QHP.

(g) *No discrimination on basis of provision of abortion.* No QHP offered through an Exchange may discriminate against any individual health care provider or health care facility because of its unwillingness to provide, pay for, provide coverage of, or refer for abortions.

(h) *Application of State and Federal laws regarding abortions.* (1) *No preemption of State laws regarding abortion.* Nothing in the Affordable Care Act shall be construed to preempt or otherwise have any effect on State laws regarding the prohibition of (or requirement of) coverage, funding, or procedural requirements on abortions, including parental notification or consent for the performance of an abortion on a minor.

(2) *No effect on Federal laws regarding abortion.* Nothing in the Affordable Care Act shall be construed to have any effect on Federal laws regarding:

(i) Conscience protection;

(ii) Willingness or refusal to provide abortion; and

(iii) Discrimination on the basis of the willingness or refusal to provide, pay for, cover, or refer for abortion or to provide or participate in training to provide abortion.

(3) *No effect on Federal civil rights law.* Nothing in section 1303(c) of the Affordable Care Act shall alter the rights and obligations of employees and employers under Title VII of the Civil Rights Act of 1964.

(i) *Application of emergency services laws.* Nothing in the Affordable Care Act shall be construed to relieve any health care provider from providing emergency services as required by State or Federal law, including section 1867 of the Act (popularly known as ''EMTALA'').

§ 156.285 Additional standards specific to SHOP.

(a) *SHOP rating and premium payment requirements.* QHP issuers offering a QHP through a SHOP must:

(1) Accept payment from the SHOP on behalf of a qualified employer or an enrollee in accordance with § 155.705(b)(4) of this subchapter;

(2) Adhere to the SHOP timeline for rate setting as established in § 155.705(b)(6) of this subchapter; and

(3) Charge the same contract rate for a plan year.

(b) *Enrollment periods for the SHOP.* QHP issuers offering a QHP through the SHOP must:

(1) Enroll a qualified employee in accordance with the qualified employer's annual employee open enrollment period described in § 155.725 of this subchapter;

(2) Provide special enrollment periods described in § 155.420 excluding paragraphs (d)(3) and (6);

(3) Provide an enrollment period for an employee who becomes a qualified employee outside of the initial or annual open enrollment period as described in § 155.725(g) of this subchapter; and

(4) Adhere to effective dates of coverage in accordance with § 156.260 and those established through § 155.720 of this subchapter.

(c) *Enrollment process for the SHOP.* A QHP issuer offering a QHP through the SHOP must:

(1) Adhere to the enrollment timeline and process for the SHOP as described in § 155.720(b) of this subchapter;

(2) Receive enrollment information in an electronic format, in accordance with the requirements in §§ 155.260 and 155.270 of this subchapter, from the SHOP as described in § 155.720(c);

(3) Provide new enrollees with the enrollment information package as described in § 156.265(e);

(4) Reconcile enrollment files with the SHOP at least monthly;

(5) Acknowledge receipt of enrollment information in accordance with SHOP standards; and

(6) Enroll all qualified employees consistent with the plan year of the applicable qualified employer.

(d) *Termination of coverage in the SHOP.* QHP issuers offering a QHP through the SHOP must:

(1) Comply with the following requirements with respect to coverage termination of enrollees in the SHOP:

(i) General requirements regarding termination of coverage established in § 156.270(a);

(ii) Requirements for notices to be provided to enrollees and qualified employers in § 156.270(b) and § 156.290(b); and

(iii) Requirements regarding termination of coverage effective dates as set forth in § 156.270(i).

(2) If a qualified employer chooses to withdraw from participation in the SHOP, the QHP issuer must terminate coverage for all enrollees of the withdrawing qualified employer.

(e) *Participation rules.* QHP issuers offering a QHP through the SHOP may impose group participation rules for the offering of health insurance coverage in connection with a QHP only if and to the extent authorized by the SHOP in accordance with § 155.705 of this subchapter.

§ 156.290 Non-renewal and decertification of QHPs.

(a) *Non-renewal of recertification.* If a QHP issuer elects not to seek recertification with the Exchange, the QHP issuer, at a minimum, must—

(1) Notify the Exchange of its decision prior to the beginning of the recertification process and procedures adopted by the Exchange in accordance with § 155.1075 of this subchapter;

(2) Fulfill its obligation to cover benefits for each enrollee through the end of the plan or benefit year;

(3) Fulfill data reporting obligations from the last plan or benefit year of the certification;

(4) Provide notice to enrollees as described in paragraph (b) of this section; and

(5) Terminate coverage for enrollees in the QHP in accordance with § 156.270, as applicable.

(b) *Notice of QHP non-renewal.* If a QHP issuer elects not to seek recertification with the Exchange for its QHP, the QHP issuer must provide written notice to each enrollee.

(c) *Decertification.* If a QHP is decertified by the Exchange, the QHP issuer must terminate coverage for enrollees only after:

(1) The Exchange has made notification as described in § 155.1080 of this subchapter; and

(2) Enrollees have an opportunity to enroll in other coverage.

§ 156.295 Prescription drug distribution and cost reporting.

(a) *General requirement.* In a form, manner, and at such times specified by HHS, a QHP issuer must provide to HHS the following information:

(1) The percentage of all prescriptions that were provided under the QHP through retail pharmacies compared to mail order pharmacies, and the percentage of prescriptions for which a generic drug was available and dispensed compared to all drugs dispensed, broken down by pharmacy type, which includes an independent pharmacy, supermarket pharmacy, or mass merchandiser pharmacy that is licensed as a pharmacy by the State and that dispenses medication to the general public, that is paid by the QHP issuer or the QHP issuer's contracted PBM;

(2) The aggregate amount, and the type of rebates, discounts or price concessions (excluding bona fide service fees) that the QHP issuer or its contracted PBM negotiates that are attributable to patient utilization under the QHP, and the aggregate amount of the rebates, discounts, or price concessions that are passed through to the QHP issuer, and the total number of prescriptions that were dispensed.

(i) Bona fide service fees means fees paid by a manufacturer to an entity that represent fair market value for a bona fide, itemized service actually performed on behalf of the manufacturer that the manufacturer would otherwise perform (or contract for) in the absence of the service arrangement, and that are not passed on in whole or in part to a client or customer of an entity, whether or not the entity takes title to the drug.

(ii) [Reserved]

(3) The aggregate amount of the difference between the amount the QHP issuer pays its contracted PBM and the amounts that the PBM pays retail pharmacies, and mail order pharmacies, and the total number of prescriptions that were dispensed.

(b) *Confidentiality.* Information disclosed by a QHP issuer or a PBM under this section is confidential and shall not be disclosed by HHS or by a QHP receiving the information, except that HHS may disclose the information in a form which does not disclose the identity of a specific PBM, QHP, or prices charged for drugs, for the following purposes:

(1) As HHS determines to be necessary to carry out section 1150A or part D of title XVIII of the Act;

(2) To permit the Comptroller General to review the information provided;

(3) To permit the Director of the Congressional Budget Office to review the information provided; or

(4) To States to carry out section 1311 of the Affordable Care Act.

(c) *Penalties.* A QHP issuer that fails to report the information described in paragraph (a) of this section to HHS on a timely basis or knowingly provides false information will be subject to the provisions of subsection (b)(3)(C) of section 1927 of the Act.

■ 9. Section 156.505 is amended by—

■ A. Revising the definitions of ''CO–OP qualified health plan,'' ''Exchange,'' Individual market,'' ''Issuer,'' ''SHOP,'' ''Small group market,'' and ''State.''

■ B. Removing the definitions of ''Group health plan,'' ''Health insurance coverage,'' ''Qualified employer,'' ''Qualified health plan,'' and ''Small employer.''

The revisions read as follows:

§ 156.505 Definitions.

* * * * *

CO–OP qualified health plan means a health plan that has in effect a certification that it meets the standards described in subpart C of this part, except that the plan can be deemed certified by CMS or an entity designated by CMS as described in § 156.520(e).

Exchange has the meaning given to the term in § 155.20 of this subchapter.

* * * * *

Individual market has the meaning given to the term in § 155.20 of this subchapter.

Issuer has the meaning given to the term in § 155.20 of this subchapter.

* * * * *

SHOP has the meaning given to the term in § 155.20 of this subchapter.

Small group market has the meaning given to the term in § 155.20 of this subchapter.

* * * * *

State has the meaning given to the term in § 155.20 of this subchapter.

■ 10. Section 156.510 is amended by revising paragraph (b)(2)(i) to read as follows:

§ 156.510 Eligibility.

* * * * *

(b) * * *

(2) * * *

(i) Has as a sponsor a nonprofit, not-for-profit, public benefit, or similarly organized entity that also sponsors a pre-existing issuer but is not an issuer, a foundation established by a pre-existing issuer, a holding company that controls a pre-existing issuer, or a trade association comprised of pre-existing issuers and whose purpose is to represent the interests of the health insurance industry, provided that the pre-existing issuer sponsored by the nonprofit organization does not share any of its board or the same chief executive with the applicant; or

* * * * *

§ 156.520 [Amended]

■ 11. Section 156.520 is amended by removing paragraph (e)(1), and redesignating paragraphs (e)(2), (3), and (4) as paragraphs (e)(1), (2), and (3) respectively.

■ 12. Part 157 is added to read as follows:

PART 157—EMPLOYER INTERACTIONS WITH EXCHANGES AND SHOP PARTICIPATION

Subpart A—General Provisions

Sec.
157.10 Basis and scope.
157.20 Definitions.

Subpart B—[Reserved]

Subpart C—Standards for Qualified Employers

157.200 Eligibility of qualified employers to participate in a SHOP.
157.205 Qualified employer participation process in a SHOP.

Authority: Title I of the Affordable Care Act, Sections 1311, 1312, 1321, 1411, 1412, Pub. L. 111–148, 124 Stat. 199.

Subpart A—General Provisions

§ 157.10 Basis and scope.

(a) *Basis.* This part is based on the following sections of title I of the Affordable Care:

(1) 1311. Affordable choices of health benefits plans.

(2) 1312. Consumer Choice.

(3) 1321. State flexibility in operation and enforcement of Exchanges and related requirements.

(4) 1411. Procedures for determining eligibility for Exchange participation, advance payments of the premium tax credit and cost-sharing reductions, and individual responsibility exemptions.

(5) 1412. Advance determination and payment of the premium tax credit and cost-sharing reductions.

(b) *Scope.* This part establishes the requirements for employers in connection with the operation of Exchanges.

§ 157.20 Definitions.

The following definitions apply to this part, unless otherwise indicated:

Qualified employee has the meaning given to the term in § 155.20 of this subchapter.

Qualified employer has the meaning given to the term in § 155.20 of this subchapter.

Small employer has the meaning given to the term in § 155.20 of this subchapter.

Subpart B—[Reserved]

Subpart C—Standards for Qualified Employers

§ 157.200 Eligibility of qualified employers to participate in a SHOP.

(a) *General requirement.* Only a qualified employer may participate in the SHOP in accordance with § 155.710 of this subchapter.

(b) *Continuing participation for growing small employers.* A qualified employer may continue to participate in the SHOP if it ceases to be a small employer in accordance with § 155.710 of this subchapter.

(c) *Participation in multiple SHOPs.* A qualified employer may participate in multiple SHOPs in accordance with § 155.710 of this subchapter.

§ 157.205 Qualified employer participation process in a SHOP.

(a) *General requirements.* When joining the SHOP, a qualified employer must comply with the requirements, processes, and timelines set forth by this part and must remain in compliance for the duration of the employer's participation in the SHOP.

(b) *Selecting QHPs.* During an election period, a qualified employer may make coverage in a QHP available through the SHOP in accordance with the processes developed by the SHOP in accordance with § 155.705 of this subchapter.

(c) *Information dissemination to employees.* A qualified employer participating in the SHOP must disseminate information to its qualified employees about the process to enroll in a QHP through the SHOP.

(d) *Payment.* A qualified employer must submit any contribution towards the premiums of any qualified employee according to the standards and processes described in § 155.705 of this subchapter.

(e) *Employees hired outside of the initial or annual open enrollment period.* Qualified employers must provide employees hired outside of the initial or annual open enrollment period with:

(1) A period to seek coverage in a QHP beginning on the first day of becoming a qualified employee; and

(2) Information about the enrollment process in accordance with § 155.725 of this subchapter.

(f) *New employees and changes in employee eligibility.* Qualified employers participating in the SHOP must provide the SHOP with information about dependents or employees whose eligibility status for coverage purchased through the employer in the SHOP has changed, including:

(1) Newly eligible dependents and employees; and

(2) Loss of qualified employee status.

(g) *Annual employer election period.* Qualified employers must adhere to the annual employer election period to change their program participation for the next plan year described in § 155.725(c) of this subchapter.

Dated: March 1, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: March 2, 2012.

Kathleen Sebelius,

Secretary.

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Part III

Department of Energy

10 CFR Part 430

Energy Conservation Program: Energy Conservation Standards for Battery Chargers and External Power Supplies; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2008–BT–STD–0005]

RIN 1904–AB57

Energy Conservation Program: Energy Conservation Standards for Battery Chargers and External Power Supplies

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

ACTION: Notice of proposed rulemaking (NOPR) and public meeting.

SUMMARY: The Energy Policy and Conservation Act (EPCA) prescribes energy conservation standards for various consumer products and commercial and industrial equipment, including battery chargers and external power supplies (EPSs). EPCA also requires the U.S. Department of Energy (DOE) to determine whether more stringent, amended standards for these products are technologically feasible, economically justified, and would save a significant amount of energy. In this notice, DOE proposes amended energy conservation standards for Class A EPSs and new energy conservation standards for non-Class A EPSs and battery chargers. The notice also announces a public meeting to receive comment on these proposed standards and associated analyses and results.

DATES: DOE will hold a public meeting on Wednesday, May 2, 2012 from 9 a.m. to 5 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section VII, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than May 29, 2012. See section VI, ''Public Participation,'' for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Edwards to initiate the necessary procedures. Please also note that those wishing to bring laptops into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes.

Any comments submitted must identify the NOPR for Energy Conservation Standards for Battery Chargers and External Power Supplies, and provide docket number EE–2008–BT–STD–0005 and/or regulatory information number (RIN) number 1904–AB57. Comments may be submitted using any of the following methods:

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

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

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC, 20585–0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.

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

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Office of Energy Efficiency and Renewable Energy through the methods listed above and by email to *Chad_S_Whiteman@omb.eop.gov.*

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

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

A link to the docket web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/battery_external.html.* This web page will contain a link to the docket for this notice on the regulations.gov site. The regulations.gov web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section VII for information on how to submit comments through regulations.gov.

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

FOR FURTHER INFORMATION CONTACT: Mr. Victor Petrolati, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 586–4549. Email: *Victor.Petrolati@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–8145. Email: *michael.kido@hq.doe.gov.*

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I. Summary of the Proposed Rule

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles. Pursuant to EPCA, any new or amended energy conservation standard that DOE prescribes for certain products, such as battery chargers and external power supplies (EPSs), shall be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)). Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)). In accordance with these and other statutory provisions discussed in this notice, DOE proposes amended energy conservation standards for Class A EPSs and new energy conservation standards for non-Class A EPSs and battery chargers. The proposed standards for direct operation EPSs, which are the minimum average efficiency in active mode and the maximum power consumption in no-load mode expressed as a function of the nameplate output power, are shown in Table I.1. The proposed standards for battery chargers, which consist of a set of maximum annual energy consumption levels expressed as a function of battery energy, are shown in Table I–2. These proposed standards, if adopted, would apply to all products listed in Table I.1 and Table I–2 and manufactured in, or imported into, the United States on or after July 1, 2013. In addition to being technologically

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

feasible and economically justified, DOE's proposed standards were also designed to maximize the net monetized benefits, as explained further below in this notice.

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Table I-1. Proposed Energy Conservation Standards for Direct Operation External Power Supplies

AC-DC, Basic-Voltage External Power Supply		
Nameplate Output Power (P_{out})	**Minimum Average Efficiency in Active Mode** *(expressed as a decimal)*	**Maximum Power in No-Load Mode [W]**
0 to ≤ 1 watt	$\geq 0.5 * P_{out} + 0.16$	≤ 0.100
> 1 to ≤ 49 watts	$\geq 0.071 * \ln(P_{out}) - 0.0014 * P_{out} + 0.67$	≤ 0.100
> 49 watts to ≤ 250 watts	≥ 0.880	≤ 0.210
> 250 watts	0.875	≤ 0.500
AC-DC, Low-Voltage External Power Supply		
Nameplate Output Power (P_{out})	**Minimum Average Efficiency in Active Mode** *(expressed as a decimal)*	**Maximum Power in No-Load Mode [W]**
0 to ≤ 1 watt	$\geq 0.517 * P_{out} + 0.087$	≤ 0.100
> 1 to ≤ 49 watts	$\geq 0.0834 * \ln(P_{out}) - 0.0014 * P_{out} + 0.609$	≤ 0.100
> 49 watts to ≤ 250 watts	≥ 0.870	≤ 0.210
> 250 watts	0.875	≤ 0.500
AC-AC, Basic-Voltage External Power Supply		
Nameplate Output Power (P_{out})	**Minimum Average Efficiency in Active Mode** *(expressed as a decimal)*	**Maximum Power in No-Load Mode**
0 to ≤ 1 watt	$\geq 0.5 * P_{out} + 0.16$	≤ 0.210
> 1 to ≤ 49 watts	$\geq 0.071 * \ln(P_{out}) - 0.0014 * P_{out} + 0.67$	≤ 0.210
> 49 watts to ≤ 250 watts	≥ 0.880	≤ 0.210
> 250 watts	0.875	≤ 0.500
AC-AC, Low-voltage External Power Supply		
Nameplate Output Power (P_{out})	**Minimum Average Efficiency in Active Mode** *(expressed as a decimal)*	**Maximum Power in No-Load Mode**
0 to ≤ 1 watt	$\geq 0.517 * P_{out} + 0.087$	≤ 0.210

> 1 to ≤ 49 watts	≥ 0.0834 * ln(P_{out}) - 0.0014 * P_{out} + 0.609	≤ 0.210
> 49 watts to ≤ 250 watts	≥ 0.870	≤ 0.210
> 250 watts	0.875	≤ 0.500
Multiple-Voltage External Power Supply		
Nameplate Output Power (P_{out})	**Minimum Average Efficiency in Active Mode** *(expressed as a decimal)*	**Maximum Power in No-Load Mode [W]**
0 to ≤ 1 watt	≥ 0.497 × P_{out} + 0.067	≤ 0.300
> 1 to ≤ 49 watts	≥ 0.075 × ln (P_{out}) + 0.561	≤ 0.300
> 49 watts	≥ 0.860	≤ 0.300

Table I-2. Proposed Energy Conservation Standards for Battery Chargers

Product Class	Product Class Description	Proposed Standard as a Function of Battery Energy (kWh/yr)
1	Low-Energy, Inductive	3.04
2	Low-Energy, Low-Voltage	= 0.2095(E_{batt}*) + 5.87
3	Low-Energy, Medium-Voltage	For E_{batt} < 9.74 Wh, = 4.68 For E_{batt} ≥ 9.74 Wh, = 0.0933(E_{batt}) + 3.77
4	Low-Energy, High-Voltage	For E_{batt} < 9.71 Wh, = 9.03 For E_{batt} ≥ 9.71 Wh, = 0.2411(E_{batt}) + 6.69
5	Medium-Energy, Low-Voltage	For E_{batt} < 355.18 Wh, = 20.06 For E_{batt} ≥ 355.18 Wh, = 0.0219(E_{batt}) + 12.28
6	Medium-Energy, High-Voltage	For E_{batt} < 239.48 Wh = 30.37 For E_{batt} ≥ 239.48 Wh = 0.0495(E_{batt}) + 18.51
7	High-Energy	= 0.502(E_{batt}) + 4.53
8	Low-Voltage DC Input	0.66
9	High-Voltage DC Input	No Standard.
10a	AC Output, Basic (i.e. no Automatic Voltage Regulation)	For E_{batt} < 37.2 Wh, = 2.54 For E_{batt} ≥ 37.2 Wh, = 0.0733(E_{batt}) – 0.18
10b	AC Output, Contains Automatic Voltage Regulation	For E_{batt} < 37.2 Wh, = 6.18 For E_{batt} ≥ 37.2 Wh, = 0.0733(E_{batt}) + 3.45

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A. Benefits and Costs to Consumers

Table I–3 presents DOE's evaluation of the economic impacts of the proposed standards on consumers of EPSs, as measured by the average life-cycle cost (LCC) savings and the median payback period. The projected economic impacts of the proposed standards on individual consumers are generally positive. For example, the estimated average life-cycle cost (LCC) savings are from −$0.45 to $0.69 for product class B, depending on the representative unit, $2.07 for product class X, and $129.08 for product class H.[2]

Table I-3 Impacts of Proposed Standards on Consumers of External Power Supplies

Product Class	Rep. Unit	Weighted Average LCC Savings [2010$]	Median Payback Period[3] [yrs]
B	2.5W AC-DC, Basic V	0.04	4.3
B	18W AC-DC, Basic V	0.69	3.1
B	60W AC-DC, Basic V	(0.45)	5.4
B	120W AC-DC, Basic V	0.61	1.9
X	203W Multiple-Voltage	2.07	4.7
H	345W High-Power	129.08	0.2

Table I–4 presents DOE's evaluation of the economic impacts of the proposed standards on consumers of battery chargers, as measured by the average life-cycle cost (LCC) savings and the median payback period. The projected economic impacts of the proposed standards on individual consumers are generally positive. For example, the estimated average life-cycle cost (LCC) savings are $1.52 for product class 1, $0.16 for product class 2, $0.35 for product class 3, $0.43 for product class 4, $33.79 for product class 5, $40.78 for product class 6, $38.26 for product class 7, $3.04 for product class 8, and $8.30 for product class 10.[4]

Table I-4 Impacts of Proposed Standards on Consumers of Battery Chargers

Rep. Unit	Weighted Average LCC Savings [2010$]	Median Payback Period [yrs]
PC1 - Low E, Inductive	1.52	1.7
PC2 - Low E, Low-Voltage	0.16	0.5
PC3 - Low E, Medium-Voltage	0.35	3.9
PC4 - Low E, High-Voltage	0.43	3.0
PC5 - Medium E, Low-Voltage	33.79	0.0
PC6 - Medium E, High-Voltage	40.78	0.0
PC7 - High E	38.26	0.0
PC8 - DC-DC, <9V Input	3.04	0.0
PC10 - Low E, AC Out	8.30	1.5

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B. Impact on Manufacturers

The industry net present value (INPV) is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2011 to 2042). Using a real discount rate of 7.1 percent, DOE estimates that

[2] The LCC is the total consumer expense over the life of a product, consisting of purchase and installation costs plus operating costs (expenses for energy use, maintenance and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.

[3] As explained in V.B.1.a, DOE uses the median payback period rather than the mean payback period to dampen the effect of outliers on the data.

[4] The LCC is the total consumer expense over the life of a product, consisting of purchase and installation costs plus operating costs (expenses for energy use, maintenance and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.

the INPV for manufacturers of EPSs is $0.276 billion in 2010$. Under the proposed standards, DOE expects that manufacturers may lose up to 34.1 percent of their INPV, which is approximately $0.094 billion in 2010$. Based on DOE's interviews with the manufacturers of EPSs and because DOE did not identify any domestic EPS production, DOE does not expect any domestic plant closings or any significant change in employment, since the vast majority, if not all EPS production occurs abroad.

For battery chargers, DOE estimates that the INPV for manufacturers of applications that include battery chargers is between $53.918 and $53.205 billion in 2010$ using a real discount rate of 9.1 percent. Under the proposed standards, DOE expects that manufacturers may lose up to 10.2 percent of their INPV, which is approximately $5.428 billion in 2010$. Based on DOE's interviews with the manufacturers of battery chargers, DOE does not expect any domestic plant closings or significant change in employment, since DOE only identified one domestic battery charger manufacturer.

C. National Benefits

External Power Supplies

DOE's analyses indicate that the proposed standards would save a significant amount of energy over 30 years (2013–2042)—an estimated 0.99 quads of cumulative energy for EPSs.

The product classes at issue are comprised of the following groupings of EPS products listed below.

Table I-5. External Power Supply Product Classes

Product Class	Product Class Description	
B	DC Output, Basic-Voltage	2.5 W (0-10.25 W)
		18 W (10.25-39 W)
		60 W (39-90 W)
		120 W (91-250 W)
C	DC Output, Low-Voltage	
D	AC Output, Basic-Voltage	
E	AC Output, Low-Voltage	
X	Multiple-Voltage	
H	High-Power	
N	Indirect Operation	

The cumulative national net present value (NPV) of total consumer costs and savings of the proposed standards in 2010$ ranges from $0.79 billion (at a 7-percent discount rate) to $1.87 (at a 3-percent discount rate) for EPSs. This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs for products purchased in 2013–2042, discounted to 2011.

In addition, the proposed standards would have significant environmental benefits. The energy saved is in the form of electricity, would result in cumulative greenhouse gas emission reductions of 46.5 million metric tons (Mt) [5] of carbon dioxide (CO_2) in 2013–2042. During this period, the proposed standards would result in emissions reductions of 38 thousand tons of nitrogen oxides (NO_X) and 0.25 tons (t) of mercury (Hg).[6] DOE estimates the net

[5] A metric ton is equivalent to 1.1 short tons. Results for NO_X and Hg are given in short tons.

[6] DOE calculates emissions reductions relative to the most recent version of the Annual Energy Outlook (AEO) Reference case forecast. This forecast accounts for regulatory emissions reductions from in-place regulations, including the Clean Air Interstate Rule (CAIR, 70 FR 25162 (May 12, 2005)), but not the Clean Air Mercury Rule (CAMR, 70 FR 28606 (May 18, 2005)). Subsequent regulations, including the finalized CAIR

Continued

present monetary value of the CO_2 emissions reduction is between $0.20 and $2.95 billion, expressed in 2010$ and discounted to 2011. DOE also estimates the net present monetary value of the NO_X emissions reduction, expressed in 2010$ and discounted to 2011, is between $6.11 and $62.79 million at a 7-percent discount rate, and between $10.97 and $112.73 million at a 3-percent discount rate.[7]

The benefits and costs of today's proposed standards, for products sold in 2013–2042, can also be expressed in terms of annualized values. The annualized monetary values are the sum of (1) the annualized national economic value of the benefits from consumer operation of products that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase and installation costs, which is another way of representing consumer NPV), and (2) the annualized monetary value of the benefits of emission reductions, including CO_2 emission reductions.[8] The value of the CO_2 reductions, otherwise known as the Social Cost of Carbon (SCC), is calculated using a range of values per metric ton of CO_2 developed by a recent interagency process. The derivation of the SCC values is discussed in section IV.M.

Although combining the values of operating savings and CO_2 reductions provides a useful perspective, two issues should be considered. First, the national operating savings are domestic U.S. consumer monetary savings that occur as a result of market transactions while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use quite different time frames for analysis. The national operating cost savings is measured for the lifetime of EPSs shipped in 2013–2042. The SCC values, on the other hand, reflect the present value of all future climate-related impacts resulting from the emission of one ton of carbon dioxide in each year. These impacts continue well beyond 2100.

Table I–6 shows the annualized values for today's proposed standards for EPSs. (All monetary values below are expressed in 2010$.) The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction, for which DOE used a 3-percent discount rate along with the SCC series corresponding to a value of $22.3/ton in 2010, the cost of the standards proposed in today's rule is $251.9 million per year in increased equipment costs, while the annualized benefits are $325.2 million per year in reduced equipment operating costs, $52.3 million in CO_2 reductions, and $3.2 million in reduced NO_X emissions. In this case, the net benefit amounts to $128.7 million per year. Using a 3-percent discount rate for all benefits and costs and the SCC series corresponding to a value of $22.3/ton in 2010, the cost of the standards proposed in today's rule is $247.3 million per year in increased equipment costs, while the benefits are $348.2 million per year in reduced operating costs, $52.3 million in CO_2 reductions, and $3.3 million in reduced NO_X emissions. In this case, the net benefit amounts to $156.6 million per year.

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replacement rule, the Cross-State Air Pollution rule issued on July 6, 2011, do not appear in the forecast. On December 30, 2011, the D.C. Circuit stayed CSAPR while ordering EPA to continue administering the also remanded 2005 Clean Air Interstate Rule (CAIR, which has a similar structure, but with less stringent budgets and less restrictive trading provisions) and tentatively set a briefing schedule to allow the case to be heard by April 2012.

[7] DOE is aware of multiple agency efforts to determine the appropriate range of values used in evaluating the potential economic benefits of reduced Hg emissions. DOE has decided to await further guidance regarding consistent valuation and reporting of Hg emissions before it once again monetizes Hg in its rulemakings.

[8] The process that DOE used to convert the time-series of costs and benefits into annualized values is explained in section V.C.3 of this notice.

Table I-6 Annualized Benefits and Costs of Proposed Standards for External Power Supplies Shipped in 2013-2042

	Discount Rate	Primary Estimate*	Low Net Benefits Estimate*	High Net Benefits Estimate*
		Monetized (million 2010$/year)		
Benefits				
Operating Cost Savings	7%	325.2	309.1	341.1
	3%	348.2	329.5	367.3
CO_2 Reduction at $4.9/t**	5%	14.1	14.1	14.1
CO_2 Reduction at $22.3/t**	3%	52.3	52.3	52.3
CO_2 Reduction at $36.5/t**	2.5%	81.4	81.4	81.4
CO_2 Reduction at $67.6/t**	3%	159.6	159.6	159.6
NO_X Reduction at $2,537/t**	7%	3.2	3.2	3.2
	3%	3.3	3.3	3.3
Total†	7% plus CO_2 range	342.5 to 488.0	326.4 to 471.9	358.4 to 503.9
	7%	380.7	364.6	396.6
	3%	403.9	385.1	422.9
	3% plus CO_2 range	365.7 to 511.2	346.9 to 492.5	384.7 to 530.3
Costs				
Incremental Product Costs	7%	251.9	251.9	251.9
	3%	247.3	247.3	247.3
Total Net Benefits				
Total †	7% plus CO_2 range	90.5 to 236.1	74.4 to 220.0	106.5 to 252.0
	7%	128.7	112.6	144.7
	3%	156.6	137.9	175.7
	3% plus CO_2 range	118.4 to 264.0	99.7 to 245.2	137.5 to 283.0

* The results include benefits to consumers which accrue after 2042 from the products purchased from 2013 through 2042. Costs incurred by manufacturers, some of which may be incurred prior to 2013 in preparation for the rule, are indirectly included as part of incremental equipment costs. The Primary, Low Benefits, and High Benefits Estimates utilize forecasts of energy prices from the AEO2010 Reference case, Low Estimate, and High Estimate, respectively.

** The CO_2 values represent global monetized values (in 2010$) of the social cost of CO_2 emissions in 2010 under several scenarios. The values of $4.9, $22.3, and $36.5 per ton are the averages of SCC distributions calculated using 5-percent, 3-percent, and 2.5-percent discount rates, respectively. The value of $67.6 per ton represents the 95th percentile of the SCC distribution calculated using a 3-percent discount rate. The value for NO_X (in 2010$) is the average of the low and high values used in DOE's analysis.
† Total Benefits for both the 3-percent and 7-percent cases are derived using the SCC value calculated at a 3-percent discount rate, which is $22.3/ton in 2010 (in 2010$). In the rows labeled as "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

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DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. DOE further notes that products achieving these standard levels are already commercially available for all product classes covered by today's proposal for EPSs, other than product class H (high-power EPSs). Based on the analyses described above, DOE has tentatively concluded that the benefits of the proposed standards to the Nation (energy savings, positive NPV of consumer benefits, consumer LCC savings, and emission reductions) would outweigh the burdens (loss of INPV for manufacturers and LCC increases for some consumers).

DOE also considered more-stringent and less stringent energy use levels as trial standard levels, and is still considering them in this rulemaking. However, DOE has tentatively concluded that the potential burdens of the more-stringent energy use levels would outweigh the projected benefits. Based on consideration of the public comments DOE receives in response to this notice and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy use levels presented in this notice that are either higher or lower than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part.

Battery Chargers

DOE's analyses for battery chargers indicate that the proposed standards would save a significant amount of energy over 30 years (2013–2042)—an estimated 1.36 quads of cumulative energy for battery chargers.

The product classes at issue are comprised of the groupings of battery chargers listed in Table I–7. Each product class grouping was established based on the battery charger's input/output type, and further divided into product classes according to battery energy and voltage.

Table I-7. Battery Charger Product Classes

Product Class #	Input / Output Type	Battery Energy (Wh)	Special Characteristic or Battery Voltage	Product Class Description
1	AC In, DC Out	< 100	Inductive Connection	Low-Energy, Inductive
2			< 4 V	Low-Energy, Low-Voltage
3			4 – 10 V	Low-Energy, Medium-Voltage
4			> 10 V	Low-Energy, High-Voltage
5		100–3000	< 20 V	Medium-Energy, Low-Voltage
6			≥ 20 V	Medium-Energy, High-Voltage
7		> 3000	-	High-Energy
8	DC In, DC Out	-	< 9 V Input	Low-Voltage DC Input
9		-	≥ 9 V Input	High-Voltage DC Input
10a	AC In, AC Out	-	Basic (i.e. no Automatic Voltage Regulation)	10a
10b		-	Contains Automatic Voltage Regulation	10b

The cumulative national net present value (NPV) of total consumer costs and savings of the proposed standards in 2010$ ranges from $6.04 billion (at a 7-percent discount rate) to $10.96 billion (at a 3-percent discount rate) for battery chargers. This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs for products purchased in 2013–2042, discounted to 2011.

In addition, the proposed standards would have significant environmental benefits. The savings would result in cumulative greenhouse gas emission reductions of 62.9 Mt of CO_2 in 2013–2042. During this period, the proposed

standards would result in emissions reductions of 52 thousand tons of NO_X and 0.35 tons of mercury. DOE estimates the net present monetary value of the CO_2 emissions reduction is between $0.27 and $4.04 billion, expressed in 2010$ and discounted to 2011. DOE also estimates the net present monetary value of the NO_X emissions reduction, expressed in 2010$ and discounted to 2011, is between $8.19 and $84.14 million at a 7-percent discount rate, and between $14.88 and $153.05 million at a 3-percent discount rate.

The benefits and costs of today's proposed standards, for products sold in 2013–2042, can also be expressed in terms of annualized values. The annualized monetary values are the sum of (1) the annualized national economic value of the benefits from consumer operation of products that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase and installation costs, which is another way of representing consumer NPV), and (2) the annualized monetary value of the benefits of emission reductions, including CO_2 emission reductions. The value of the CO_2 reductions is calculated using a range of values per metric ton of CO_2 developed by a recent interagency process. The derivation of the SCC values is discussed in section IV.M.

Although combining the values of operating savings and CO_2 reductions provides a useful perspective, two issues should be considered. First, the national operating savings are domestic U.S. consumer monetary savings that occur as a result of market transactions while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use quite different time frames for analysis. The national operating cost savings is measured for the lifetime of battery chargers shipped in 2013–2042. The SCC values, on the other hand, reflect the present value of all future climate-related impacts resulting from the emission of one ton of carbon dioxide in each year. These impacts continue well beyond 2100.

Table I–8 shows the annualized values for today's proposed standards for battery chargers. (All monetary values below are expressed in 2010$.) The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction, for which DOE used a 3-percent discount rate along with the SCC series corresponding to a value of $22.3/ton in 2010, the standards proposed in today's rule result in $110.0 million per year in equipment costs savings, and the annualized benefits are $447.2 million per year in reduced equipment operating costs, $71.6 million in CO_2 reductions, and $4.3 million in reduced NO_X emissions. In this case, the benefit amounts to $633.0 million per year. Using a 3-percent discount rate for all benefits and costs and the SCC series corresponding to a value of $22.3/ton in 2010, the standards proposed in today's rule result in $107.9 million per year in equipment costs savings, and the benefits are $485.2 million per year in reduced operating costs, $71.6 million in CO_2 reductions, and $4.5 million in reduced NO_X emissions. In this case, the net benefit amounts to $669.3 million per year.

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Table I-8 Annualized Benefits and Costs of Proposed Standards for Battery Chargers Shipped in 2013-2042

	Discount Rate	Primary Estimate*	Low Net Benefits Estimate*	High Net Benefits Estimate*
		Monetized (million 2010$/year)		
Benefits				
Operating Cost Savings	7%	447.2	425.6	468.8
	3%	485.2	459.7	511.2
CO_2 Reduction at $4.9/t**	5%	19.3	19.3	19.3
CO_2 Reduction at $22.3/t**	3%	71.6	71.6	71.6
CO_2 Reduction at $36.5/t**	2.5%	111.5	111.5	111.5
CO_2 Reduction at $67.6/t**	3%	218.5	218.5	218.5
NO_X Reduction at $2,537/t**	7%	4.3	4.3	4.3
	3%	4.5	4.5	4.5
Total †	7% plus CO_2 range	470.7 to 670.0	449.1 to 648.4	492.4 to 691.6
	7%	523.1	501.5	544.7
	3%	561.3	535.8	587.4
	3% plus CO_2 range	509.0 to 708.2	483.5 to 682.7	535.0 to 734.3
Costs				
Incremental Product Costs[9]	7%	(110.0)	(110.0)	(110.0)
	3%	(107.9)	(107.9)	(107.9)
Total Net Benefits				
Total †	7% plus CO_2 range	580.7 to 780.0	559.1 to 758.3	602.3 to 801.6
	7%	633.0	611.4	654.7
	3%	669.3	643.8	695.3
	3% plus CO_2 range	616.9 to 816.2	591.4 to 790.7	643.0 to 842.2

* The results include benefits to consumers which accrue after 2042 from the products purchased from 2013 through 2042. Costs incurred by manufacturers, some of which may be incurred prior to 2013 in preparation for the rule, are indirectly included as part of incremental equipment costs. The Primary, Low Benefits, and High Benefits Estimates utilize forecasts of energy prices from the AEO2010 Reference case, Low Estimate, and High Estimate, respectively

** The CO_2 values represent global monetized values (in 2010$) of the social cost of CO_2 emissions in 2010 under several scenarios. The values of $4.9, $22.3, and $36.5 per ton are the averages of SCC distributions calculated using 5-percent, 3-percent, and 2.5-percent discount rates, respectively. The value of $67.6 per ton represents the 95th percentile of the SCC distribution calculated using a 3-percent discount rate. The value for NO_X (in 2010$) is the average of the low and high values used in DOE's analysis.

† Total Benefits for both the 3-percent and 7-percent cases are derived using the SCC value calculated at a 3-percent discount rate, which is $22.3/ton in 2010 (in 2010$). In the rows labeled as "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

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[9] The incremental product costs for battery chargers are negative because of a shift in technology from linear power supplies to switch mode power for the larger battery chargers in product classes 5, 6, and 7.

DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. DOE further notes that products achieving these standard levels are already commercially available for all product classes covered by today's proposal for battery chargers, other than product class 10 (AC output). Based on the analyses described above, DOE has tentatively concluded that the benefits of the proposed standards to the Nation (energy savings, positive NPV of consumer benefits, consumer LCC savings, and emission reductions) would outweigh the burdens (loss of INPV for manufacturers and LCC increases for some consumers).

DOE also considered more-stringent and less-stringent energy use levels as trial standard levels, and is still considering them in this rulemaking. However, DOE has tentatively concluded that the potential burdens of the more-stringent energy use levels would outweigh the projected benefits. Based on consideration of the public comments DOE receives in response to this notice and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy use levels presented in this notice that are either higher or lower than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part.

II. Introduction

The following section briefly discusses the statutory authority underlying today's proposal, as well as some of the relevant historical background related to the establishment of standards for battery chargers and EPSs.

A. Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles,[10] a program covering most major household appliances (collectively referred to as ''covered products''), which includes battery chargers and EPSs. (42 U.S.C. 6295(u)) (DOE notes that under 42 U.S.C. 6295(m), the agency must periodically review its already established energy conservation standards for a covered product. Under this requirement, the next review that DOE would need to conduct must occur no later than six years from the issuance of a final rule establishing or amending a standard for a covered product.)

Pursuant to EPCA, DOE's energy conservation program for covered products consists essentially of four parts: (1) Testing; (2) labeling; (3) the establishment of Federal energy conservation standards; and (4) certification and enforcement procedures. The Federal Trade Commission (FTC) is primarily responsible for labeling, and DOE implements the remainder of the program. Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6293) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. See 42 U.S.C. 6295(s). As stated below in Section II.B.2 the DOE test procedures for battery chargers and EPSs currently appear at title 10, Code of Federal Regulations (CFR), part 430, subpart B, appendices Y and Z, respectively.

DOE must follow specific statutory criteria when prescribing amended standards for covered products. As indicated above, any amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, EPCA precludes DOE from adopting any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)) Moreover, DOE may not prescribe a standard: (1) For certain products, including battery chargers and EPSs, if no test procedure has been established for the product, or (2) if DOE determines by rule that the proposed standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(A)–(B)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of the products subject to the standard;
2. The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the imposition of the standard;
3. The total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard;
4. Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;
5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;
6. The need for national energy and water conservation; and
7. Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

EPCA, as codified, also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Further, EPCA, as codified, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. See 42 U.S.C. 6295(o)(2)(B)(iii).

[10] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

Additionally, 42 U.S.C. 6295(q)(1) specifies requirements when promulgating a standard for a type or class of covered product that has two or more subcategories. DOE must specify a different standard level than that which applies generally to such type or class of products for any group of covered products that have the same function or intended use if DOE determines that covered products within such group (A) consume a different kind of energy from that consumed by other covered products within such type (or class) or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard . (42 U.S.C. 6294(q)(1)). In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d).

Finally, pursuant to the amendments contained in section 310(3) of EISA 2007, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, are required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards in under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into the standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures for battery chargers and EPSs already address standby-mode and off-mode energy use. The standards for EPSs also address this energy use; currently there are no standards for battery chargers. In this rulemaking, DOE intends to incorporate such energy use into any new or amended energy conservation standards it adopts in the final rule.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281 (Jan. 21, 2011)). EO 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.'' For the reasons stated in the preamble, DOE believes that today's NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

Consistent with EO 13563, and the range of impacts analyzed in this rulemaking, the energy efficiency standards proposed herein by DOE achieves maximum net benefits.

B. Background

1. Current Standards

Section 301 of EISA 2007 established minimum energy conservation standards for Class A EPSs, which became effective on July 1, 2008. (42 U.S.C. 6295(u)(3)(A)) These standards provided an active mode efficiency level and a no-load power consumption rate. The current standards are set forth in Table II.1 and Table II.2, respectively.

Table II-1 Federal Active Mode Energy Efficiency Standards for Class A External Power Supplies

Nameplate Output Power	Active Mode Minimum Efficiency (decimal equivalent of a percentage)
< 1 Watt	0.5*(*nameplate_output*)
1 – 51 Watts	0.5+ 0.09***ln**(*nameplate_output*)
> 51 Watts	0.85

Table II-2 Federal No-Load Mode Energy Efficiency Standards for Class A External Power Supplies

Nameplate Output Power	No-Load Mode Maximum Power Consumption
≤ 250 Watts	0.5 Watts

Currently, no Federal energy conservation standards apply to non-Class A EPSs or battery chargers.

2. History of Standards Rulemaking for Battery Chargers and External Power Supplies

Section 135 of the Energy Policy Act of 2005 (EPACT 2005), Public Law 109–58 (Aug. 8, 2005), amended sections 321 and 325 of EPCA by defining the terms ''battery charger'' and ''external power supply.'' That provision also directed DOE to prescribe definitions and test procedures related to the energy consumption of battery chargers and external power supplies and to issue a final rule that determines whether energy conservation standards shall be issued for battery chargers and external power supplies or classes of battery chargers and external power supplies. (42 U.S.C. 6295(u)(1)(A) and (E))

On December 8, 2006, DOE complied with the first of these requirements by publishing a final rule that prescribed test procedures for a variety of products. 71 FR 71340, 71365–71375. That rule, which was codified in multiple sections of the Code of Federal Regulations (CFR), included definitions and test procedures for battery chargers and EPSs. As stated above, the test procedures for these products are found in 10 CFR Part 430, Subpart B, Appendix Y (''Uniform Test Method for Measuring the Energy Consumption of Battery Chargers'') and 10 CFR Part 430, Subpart B, Appendix Z (''Uniform Test Method for Measuring the Energy Consumption of External Power Supplies'').

On December 19, 2007, Congress enacted EISA 2007, which, among other things, amended sections 321, 323, and 325 of EPCA. As part of these amendments, EISA 2007 altered the EPS definition. Under the definition previously set by EPACT 2005, the statute defined an EPS as an external power supply circuit ''used to convert household electric current into DC current or lower-voltage AC current to operate a consumer product.'' (42 U.S.C. 6291(36)(A)) Section 301 of EISA 2007 amended that definition by creating a subset of EPSs called ''Class A External Power Supplies.'' This new subset of products consisted of those EPSs that can convert to only 1 AC or DC output voltage at a time and have a nameplate output power of no more than 250 watts (W). The definition excludes any device requiring Federal Food and Drug Administration (FDA) listing and approval as a medical device in accordance with section 513 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c) or one that powers the charger of a detachable battery pack or charges the battery of a product that is fully or primarily motor operated. (42 U.S.C. 6291(36)(C)) Section 301 of EISA 2007 also established energy conservation standards for Class A EPSs that became effective on July 1, 2008, and directed DOE to conduct an energy conservation standards rulemaking to review those standards.

Additionally, section 309 of EISA 2007 amended section 325(u)(1)(E) of EPCA (42 U.S.C. 6295(u)(1)(E)) by directing DOE to issue a final rule that prescribes energy conservation standards for battery chargers or classes of battery chargers or to determine that no energy conservation standard is technologically feasible and economically justified. DOE is bundling this battery charger rulemaking proceeding with the requirement to review and consider amending the energy conservation standards for Class A EPSs. The new rulemaking requirements contained in sections 301 and 309 of EISA 2007 effectively superseded the prior determination analysis that EPACT 2005 required DOE to conduct.

Section 309 of EISA 2007 also instructed DOE to issue a final rule to determine whether DOE should issue energy conservation standards for external power supplies or classes of external power supplies no later than two years after EISA 2007's enactment. (42 U.S.C. 6295(u)(1)(E)(i)(I)) Because Congress already set standards for Class A devices, DOE interpreted this determination requirement as applying solely to assessing whether energy conservation standards are warranted for EPSs that fall outside of the Class A definition (i.e. non-Class A EPSs). Non-Class A EPSs include those devices that have a nameplate output power greater than 250 watts, are able to convert to more than one AC or DC output voltage simultaneously, and are specifically excluded from coverage under the Class A EPS definition in EISA 2007 by virtue of their application—*e.g.,* EPSs used with medical devices.[11] DOE determined that standards are warranted for non-Class A EPSs. See 75 FR 27170 (May 14, 2010). Given the similarities between battery chargers and non-Class A and Class A EPSs, DOE is handling all three product groups in a single standards rulemaking.

Finally, section 310 of EISA 2007 established definitions for active, standby, and off modes, and directed DOE to amend its existing test procedures for battery chargers and EPSs to measure the energy consumed in standby mode and off mode. (42

[11] To help ensure that the standards Congress set were not applied in an overly broad fashion, DOE applied the statutory exclusion not only to those EPSs that require FDA listing and approval but also to any EPS that provides power to a medical device.

U.S.C. 6295(gg)(2)(B)(i)) Consequently, DOE published a final rule incorporating standby- and off-mode measurements into the DOE test procedure. 74 FR 13318, 13334–13336 (March 27, 2009) Additionally, DOE amended the test procedure for battery chargers to include an active mode measurement for battery chargers and made certain amendments to the test procedure for EPSs. 76 FR 31750 (June 1, 2011).

DOE initiated its current rulemaking effort for these products by issuing the Energy Conservation Standards Rulemaking Framework Document for Battery Chargers and External Power Supplies (the framework document). See *https://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/bceps_frameworkdocument.pdf.* The framework document explained the issues, analyses, and process DOE anticipated using to develop energy efficiency standards for those products. DOE also published a notice announcing the availability of the framework document, announcing a public meeting to discuss the proposed analytical framework, and inviting written comments concerning the development of standards for battery chargers and EPSs. 74 FR 26816 (June 4, 2009)

DOE held a public meeting on July 16, 2009, to discuss the analyses and issues identified in the framework document. At the meeting, DOE described the different analyses it would conduct, the methods proposed for conducting them, and the relationships among the various analyses. Manufacturers, trade associations, environmental advocates, regulators, and other interested parties attended the meeting. The comments received at the public meeting and during the subsequent comment period helped DOE identify and resolve issues involved in this rulemaking.

Following the framework document public meeting, DOE published on November 3, 2009, a Notice of Proposed Determination to examine the feasibility and related economic costs and benefits of setting energy conservation standards for non-Class A EPSs. 74 FR 56928. This notice was followed by a final determination published on May 14, 2010, 75 FR 27170, which concluded that energy conservation standards for non-Class A EPSs appear to be technologically feasible and economically justified, and would be likely to result in significant energy savings. Consequently, DOE decided to include non-Class A EPSs in the present energy conservation standards rulemaking for battery chargers and EPSs.

DOE then gathered additional information and performed preliminary analyses for the purpose of developing potential amended energy conservation standards for Class A EPSs and new energy conservation standards for battery chargers and non-Class A EPSs. This process culminated in DOE's announcement in the **Federal Register** on September 15, 2010, of the preliminary analysis public meeting, at which DOE discussed and received comments on the following matters: the product classes DOE analyzed; the analytical framework, models, and tools that DOE was using to evaluate potential standards; the results of the preliminary analyses performed by DOE; and potential standard levels under consideration. 75 FR 56021 (the September 2010 notice). DOE also invited written comments on these subjects and announced the availability on its Web site of a preliminary technical support document (preliminary TSD) it had prepared to inform interested parties and enable them to provide comments.[12] *Id.* Finally, DOE stated its interest in receiving views concerning other relevant issues that participants believed would affect energy conservation standards for battery chargers and EPSs, or that DOE should address in this NOPR. *Id.* at 56024.

The preliminary TSD provides an overview of the activities DOE undertook in developing standards for battery chargers and EPSs, and discusses the comments DOE received in response to the framework document. It also describes the analytical framework that DOE used (and continues to use) in this rulemaking, including a description of the methodology, the analytical tools, and the relationships among the various analyses that are part of the rulemaking. The preliminary TSD presents and describes in detail each analysis DOE had performed up to that point, including descriptions of inputs, sources, methodologies, and results. These analyses were as follows:

- A *market and technology assessment* addressed the scope of this rulemaking, identified the potential classes for battery chargers and EPSs, characterized the markets for these products, and reviewed techniques and approaches for improving their efficiency;
- A *screening analysis* reviewed technology options to improve the efficiency of battery chargers and EPSs, and weighed these options against DOE's four prescribed screening criteria: (1) Technological feasibility, (2) practicability to manufacture, install, and service, (3) impacts on equipment utility or equipment availability, (4) adverse impacts on health or safety;
- An *engineering analysis* estimated the increases in manufacturer selling prices (MSPs) associated with more energy-efficient battery chargers and EPSs;
- An *energy use analysis* estimated the annual energy use in the field of battery chargers and EPSs as a function of efficiency levels;
- A *markups analysis* converted estimated manufacturer selling price (MSP) increases derived from the engineering analysis to consumer prices;
- A *life-cycle cost analysis* calculated, at the consumer level, the discounted savings in operating costs throughout the estimated average life of the product, compared to any increase in installed costs likely to result directly from the imposition of a given standard;
- A *payback period (PBP) analysis* estimated the amount of time it would take consumers to recover the higher expense of purchasing more energy efficient products through lower operating costs;
- A *shipments analysis* estimated shipments of battery chargers and EPSs over the 30-year analysis period (2013–2042), which were used in performing the national impact analysis (NIA);
- A *national impact analysis* assessed the national energy savings (NES), and the national net present value of total consumer costs and savings, expected to result from specific, potential energy conservation standards for battery chargers and EPSs; and
- A *preliminary manufacturer impact analysis* took the initial steps in evaluating the effects new or amended efficiency standards may have on manufacturers.

In the September 2010 notice, DOE summarized the nature and function of the following analyses: (1) Engineering, (2) energy use analysis, (3) markups to determine installed prices, (4) LCC and PBP analyses, and (5) national impact analysis. *Id.* at 56023–56024.

DOE held a public meeting on October 13, 2010, to discuss its preliminary analysis. At this meeting, DOE presented the methodologies and results of the analyses set forth in the preliminary TSD. Major topics discussed at the meeting included, among others, the regulation of EPSs for motorized applications and applications

[12] The preliminary TSD is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/battery_external_preliminary analysis_tsd.html.*

with detachable batteries (MADB EPSs), criteria for establishing separate product classes, and assumptions made by DOE on the usage of certain products. The comments received since publication of the September 2010 notice, including those received at the preliminary analysis public meeting, have contributed to DOE's proposed resolution of the issues noted by interested parties. This NOPR quotes and summarizes many of these comments, and responds to the issues they raised.[13]

DOE received written comments on the preliminary analysis from four industry groups (the Association of Home Appliance Manufacturers (AHAM, No. 42); the Consumer Electronics Association (CEA, No. 46), the Power Tool Institute, Inc. (PTI, No. 45); and the Wireless Power Consortium (WPC, No. 40)), six manufacturers (Cobra Electronics Corp. (Cobra, No. 51); Lester Electrical of Nebraska, Inc. (Lester) (Lester, No. 50); Motorola, Inc. (Motorola, No. 48); Philips Electronics North America Corp. (Philips, No. 41); Stanley Black & Decker (SBD, No. 44); and Wahl Clipper Corporation (Wahl, No. 53)), and several energy efficiency advocates, including a number of utilities (Pacific Gas and Electric Company, San Diego Gas and Electric Company, Southern California Gas Company, and Southern California Edison, collectively organized as the California Investor Owned Utilities (California IOUs, No. 43); Northeast Energy Efficiency Partnerships (NEEP, No. 49); and a joint comment from Pacific Gas and Electric Company, Southern California Gas Company, San Diego Gas and Electric Company, Southern California Edison, Appliance Standards Awareness Project, Northeast Energy Efficiency Partnerships, Northwest Energy Efficiency Alliance, American Council for an Energy-Efficient Economy, and Natural Resources Defense Council (PG&E, *et al.,* No. 47)). These commenters, along with those that provided oral comments at the preliminary analysis public meeting, are summarized in Table II–2.

Table II-2 Stakeholders Providing Comments on the Preliminary Analysis

Name	Abbreviation	Type*	Oral Comments	Written Comments
Association of Home Appliance Manufacturers	AHAM	IR	✓	✓
California Investor-Owned Utilities	California IOUs	U		✓
Cobra Electronics Corp.	Cobra	M		✓
Consumer Electronics Association	CEA	IR		✓
Earthjustice	EarthJustice	EA	✓	
Ecos Consulting on behalf of Pacific Gas and Electric	ECOS	EA	✓	
Fulton Innovation	Fulton Innovation	M	✓	
Lester Electrical	Lester	M		✓
Motorola	Motorola	M		✓
Northeast Energy Efficiency Partnerships	NEEP	EA		✓
Pacific Gas and Electric and others	PG&E, et al.	U		✓
Philips Electronics North America	Philips	M	✓	✓
Power Tool Institute	PTI	IR		✓
Stanley Black & Decker	SBD	M	✓	✓
Wahl Clipper	Wahl Clipper	M	✓	
Wireless Power Consortium	WPC	IR		✓

*IR: Industry Representative; M: Manufacturer; EA: Efficiency/Environmental Advocate; CA: Consumer Advocate; CS: Component Supplier: TE: Technical Expert: I: Individual; U: Utility; UA: Utility Advocate; FG: Foreign Government Agency

Following the close of the formal public comment period, DOE also received a clarification statement regarding an earlier submission to which ASAP joined with other commenters (ASAP, No. 55) and a proposal for DOE to adopt an efficiency marking protocol for battery chargers from the Natural Resources Defense Council (NRDC, No. 56).

III. General Discussion

The following section discusses various technical aspects related to this proposed rulemaking. In particular, it addresses aspects involving the test procedures for battery chargers and EPSs, the technological feasibility of potential standards to assign to these products, and the potential energy savings and economic justification for prescribing the proposed amended standards for battery chargers and EPSs.

A. Test Procedures

To help analyze the proposal for the products covered under today's rulemaking, DOE applied the recently amended test procedures for EPSs and battery chargers. The following sections explain how DOE applied these

[13] A parenthetical reference at the end of a quotation or paraphrase provides the location of the item in the public record.

procedures in evaluating the standards that are being proposed.

1. External Power Supply Test Procedures

DOE used its recently modified EPS test procedure as the basis for evaluating EPS efficiency in the NOPR. This procedure, which was recently codified in appendix Z to subpart B of 10 CFR part 430 (''Uniform Test Method for Measuring the Energy Consumption of EPSs''), includes a means to account for the energy consumption from multiple-voltage EPSs and clarifies the manner in which to test those devices that communicate with their loads. See 76 FR 31750, 31782–31783 (June 1, 2011). The term ''load communication'' refers to the ability of an EPS to identify whether a given load is compatible with the product that is being powered. See id. at 31752–31753.

The amended test procedure produces two key outputs relevant to today's proposal. In particular, the procedure provides measurements for active mode efficiency and no-load mode power consumption. For single output voltage EPSs, active-mode conversion efficiency is the ratio of output power to input power. DOE averages the efficiency at four loading conditions—25, 50, 75, and 100 percent of maximum rated output current. For multiple-voltage EPSs, the test procedure produces these same four efficiency measurements, but does not average them. For both single-voltage and multiple-voltage EPSs, DOE measures the power consumption of the EPS when disconnected from the consumer product, which is termed no-load power consumption. If the EPS has an on-off switch, the switch is placed in the ''on'' position when making this measurement.

2. Battery Charger Test Procedures

The initial battery charger test procedure, 71 FR 71340, 71368 (Dec. 8, 2006), included a means to measure battery charger energy consumption in ''maintenance'' and ''no-battery'' modes. These are non-active modes of operation for a battery charger and neither mode is the primary (i.e. active) mode of operation for a battery charger. A battery charger is in maintenance mode when the battery it is designed to charge is fully charged, but is still plugged into the charger—i.e. the charger is maintaining the charge in the battery. Standby mode, also known as no-battery mode, occurs when a battery charger is plugged into the wall (or power source), but the battery has been removed. The test procedure was amended to include measurements (or metrics) to account for the energy consumption that takes place in a battery charger during all modes of operation—active (i.e. the energy consumed by a battery charger while charging a battery), maintenance (i.e. the energy consumed to maintain the charge of a battery that has already been fully charged), standby (the energy consumed when a battery charger is plugged in, but the battery is removed from the device), and off (i.e. the energy consumed while a charger is plugged in but is switched off) modes. 76 FR 31750.

In analyzing the various products in preparation of the preliminary analysis, DOE relied on a test procedure that was largely based on a procedure that had been developed by the California Energy Commission (CEC). That procedure also served as the basis for DOE's 2010 proposal to amend the procedure to account for active mode energy consumption during testing. 75 FR 16958 (April 2, 2010).

The proposed procedure DOE employed had two key differences from the CEC procedure. First, it employed a shortened test procedure for battery chargers whose output power to the battery stabilizes within 24 hours. Second, the procedure employed a reversed charge/discharge testing order from that specified in the CEC procedure. DOE proposed switching the order such that the proposal used a preparatory charge, followed by a measured discharge, followed by a measured charge. The final rule dropped this approach in favor of the order prescribed in the CEC procedure—i.e. preparatory discharge, a measured charge, and a measured discharge. DOE applied this amended test procedure when analyzing the potential energy efficiency levels for battery chargers.

B. Technological Feasibility

The following sections address the manner in which DOE assessed the technological feasibility of potential standard levels. Energy conservation standards promulgated by DOE must be technologically feasible. Separate analyses were conducted for EPSs and battery chargers.

1. General

In each standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that have the potential to improve product or equipment efficiency. To conduct the analysis, DOE develops a list of design options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of these means for improving efficiency are technologically feasible. DOE considers a design option to be technologically feasible if it is currently in use by the relevant industry, or if a working prototype exists. See 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i), which provides that ''[t]echnologies incorporated in commercially available products or in working prototypes will be considered technologically feasible.''

Once DOE has determined that particular design options are technologically feasible, it evaluates each of these design options using the following additional screening criteria: (1) Practicability to manufacture, install, or service; (2) adverse impacts on product utility or availability; and (3) adverse impacts on health or safety. (10 CFR part 430, subpart C, appendix A, section 4(a)(4)). Section IV.B of this notice discusses the results of the screening analysis for battery chargers and EPSs, particularly the designs DOE considered, those it screened out, and those that are the basis for the trial standard levels (TSLs) in this rulemaking.

For further details on the screening analysis for this rulemaking, see chapter 4 of the TSD.

Additionally, DOE notes that it has received no interested party comments regarding patented technologies and proprietary designs that would prohibit all manufacturers from achieving the energy conservation standards proposed in today's rule. At this time, DOE believes that the proposed standards for the products covered as part of this rulemaking will not mandate the use of any such technologies, but requests additional information regarding proprietary designs and patented technologies.

2. Maximum Technologically Feasible Levels

When proposing an amended standard for a type or class of covered product, DOE must ''determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible'' for such product. (42 U.S.C. 6295(p)(1)). DOE determined the maximum technologically feasible (''max-tech'') efficiency level, as required by section 325(o) of EPCA, by interviewing manufacturers, vetting their data with subject matter experts, and presenting the results for public comment. (42 U.S.C. 6295(o)).

a. External Power Supply Max-Tech Levels

DOE conducted several rounds of interviews with manufacturers of EPSs, integrated circuits for EPSs, and

applications using EPSs. All of the manufacturers interviewed identified ways that EPSs could be modified to achieve efficiencies higher than those available with current products. These manufacturers also described the costs of achieving those efficiency improvements, which DOE examines in detail in chapter 5 of the TSD. DOE independently verified the accuracy of the information described by manufacturers.[14] Verifying this information required examining and testing products at the best-in-market efficiency level and determining what design options could still be added to improve their efficiency. By comparing the improved best-in-market designs (using predicted performance and cost) to the estimates provided by manufacturers, DOE was able to assess the reasonableness of the max-tech levels developed.

DOE solicited comment on its review of the max-tech CSLs prepared for the preliminary analysis—particularly with respect to its initial view that 2.5W EPSs may be able to achieve a max-tech efficiency of 80% rather than the lower efficiency suggested by manufacturers (See Chapter 5 of the TSD for details on how DOE aggregated manufacturer data). During interviews conducted in preparation for the NOPR, manufacturers confirmed that an 80% efficiency level is achievable for 2.5W EPSs, but not without a decrease in utility. Manufacturers stated that reaching that efficiency level would require an increase in the form factor (i.e. the geometry of the design), which would make these devices larger. The increased size of the EPS would, in the manufacturers' views, constitute a decreased utility that would be undesirable to consumers because of demands for smaller and lighter products. In light of this possibility, DOE used a max-tech efficiency value of 74.8%, which represents the average max-tech efficiency level predicted by manufacturers, to characterize CSL 4. The aggregated responses from manufacturers are discussed in chapter 5 of the TSD.

DOE created the max-tech (CSL 4) equations for average efficiency and no-load power using curve-fits (i.e. creating a continuous mathematical expression to represent the trend of the data as accurately as possible) of the aggregated manufacturer data (see chapter 5 of the TSD for details on curve fits). DOE created the equations for no-load power based on a curve fit of the no-load power among the four representative units. For both the average efficiency and no-load power CSL equations, DOE used equations similar to those for CSL 1, involving linear and logarithmic terms in the nameplate output power. DOE chose the divisions at 1 watt and 49 watts in the CSL 4 equations to ensure consistency with the nameplate output power divisions between the equations for CSL 1.

In the determination for non-Class A EPSs, DOE created CSLs based on test and teardown data as well as manufacturer interview data consistent with the Class A EPS methodology. See 75 FR 27170, 27174–27175. DOE also stated in Chapter 5 of the preliminary analysis TSD that it might further evaluate additional CSLs should that become necessary pending later analysis, including revising the max-tech CSLs for all the representative units.

For the NOPR, DOE has chosen to add a new max-tech CSL for high-power EPSs while the max-tech for multiple-voltage EPSs remains unchanged from the preliminary analysis. Based on its analysis, DOE ascertained that 345W EPSs are able to achieve comparable efficiencies to 120W EPSs because efficiency tends to improve with higher nameplate output power before leveling off regardless of output power. Because of the diminishing returns of this trend, there would be no appreciable difference in the achievable efficiency of a 120W EPS and a 345W EPS. Therefore, DOE scaled its 120W EPS cost-efficiency curve using its voltage scaling method, outlined in Chapter 5 of the TSD, to generate the max-tech CSL for 345W EPSs. The max-tech no-load metric was chosen by assuming that three 120W EPSs could theoretically be connected to deliver 345 watts to a load (i.e. three 120W EPSs yield a 360W load). Consequently, in analyzing the potential cost-efficiency curves for these products, the no-load metric DOE created for CSL 4 is three times greater than the no load used for the 120W equivalent CSL.

b. Battery Charger Max-Tech Levels

The preliminary analysis did not include max-tech efficiency levels for five of the ten product classes that are being addressed today. DOE omitted levels for these product classes because manufacturers did not provide information on levels of performance that would be technologically feasible and more efficient than the current best-in-market devices. DOE's preliminary analyses typically rely heavily on manufacturer input in framing potential max-tech levels for discussion and comment.

In preparing today's NOPR, which includes max-tech levels for the ten classes initially addressed in DOE's preliminary analysis, DOE developed a means to create max-tech levels for those classes that were previously not assigned max-tech levels. For the product classes that DOE was previously unable to generate max-tech efficiency levels, DOE used multiple approaches to develop levels for these classes. DOE once again solicited manufacturers for information and extrapolated performance parameters from its best-in-market efficiency levels. Extrapolating from the best-in-market performance efficiency levels required an examination of the devices. From this examination, DOE determined which design options could be applied and what affects they would likely have on the various battery charger performance parameters. The table below shows the reduction in energy consumption when increasing efficiency from the baseline to the max-tech efficiency level.

[14] In confirming this information, DOE obtained technical assistance from two subject matter experts—Robert Gourlay of RDG Engineering in Northridge, CA and Jon Wexler, an independent and solo consultant in Los Angeles, CA. These two experts were selected after having been found through the Institute of Electrical and Electronics Engineers (IEEE). Together, they have over 30 years of combined experience with power supply design. The experts relied on their years of experience to evaluate the validity of both the design and the general cost of the max-tech efficiency levels provided by manufacturers.

TABLE III–1—REDUCTION IN ENERGY CONSUMPTION AT MAX-TECH FOR BATTERY CHARGERS

Product class	Max-Tech unit energy consumption (kWh/yr)	Reduction of energy consumption relative to the baseline (percentage)
1 (Low-Energy, Inductive)	1.29	85
2 (Low-Energy, Low-Voltage)	0.81	91
3 (Low-Energy, Medium-Voltage)	0.75	94
4 (Low-Energy, High-Voltage)	3.01	92
5 (Medium-Energy, Low-Voltage)	15.35	82
6 (Medium-Energy, High-Voltage)	16.79	86
7 (High-Energy)	131.44	46
8 (DC to DC, <9V Input)	0.19	79
9 (DC to DC, ≥9V Input)	0.13	83
10a (AC Output, No AVR)	4.95	92
10b (AC Output, AVR)	8.58	92

Additional discussion of DOE's max-tech efficiency levels and comments received in response to the preliminary analysis can be found in the discussion of candidate standard levels in section IV.C.2.d. Specific details regarding which design options were considered for the max-tech efficiency levels (and all other CSLs) can be found in Chapter 5 of the accompanying TSD.

C. Energy Savings

The following discussion addresses the various steps DOE used to assess the potential energy savings that DOE projects will likely accrue from the various standard levels that were examined.

1. Determination of Savings

DOE used its NIA spreadsheet model to estimate energy savings from amended standards for the battery chargers and EPS products that are the subject of this rulemaking.[15] For each TSL, DOE forecasted energy savings beginning in 2013, the year that manufacturers would be required to comply with amended standards, and ending in the last year products shipped in 2042 would be retired. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between the standards case and the base case. The base case represents the forecast of energy consumption in the absence of amended mandatory efficiency standards and considers market demand for more-efficient products.

The NIA spreadsheet model calculates the electricity savings in ''site energy'' expressed in kilowatt-hours (kWh). Site energy is the energy directly consumed by battery chargers and EPSs at the locations where they are used. DOE reports national energy savings on an annual basis in terms of the aggregated source (primary) energy savings, which is the savings in the energy that is used to generate and transmit the site energy. (See chapter 10 of the TSD.) To convert site energy to source energy, DOE derived annual conversion factors from the model used to prepare the Energy Information Administration's (EIA) *Annual Energy Outlook 2010 (AEO2010).*

2. Significance of Savings

As noted above, 42 U.S.C. 6295(o)(3)(B) any standard that DOE sets must result in ''significant'' energy savings. While the term ''significant'' is not defined in the Act, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), indicated that Congress intended ''significant'' energy savings in this context to be savings that were not ''genuinely trivial.'' The energy savings for all of the TSLs considered in this rulemaking are nontrivial, and, therefore, DOE considers them ''significant'' within the meaning of section 325 of EPCA.

D. Economic Justification

This section summarizes the manner in which DOE estimated the economic impacts for the various potential standards that it evaluated. Among the aspects considered by DOE were the economic impacts on both manufacturers and consumers, life cycle costs, the amount of projected energy savings, product utility and performance, impacts on competition, and the general need to conserve energy.

1. Specific Criteria

As noted in section II.B, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of new and amended standards on manufacturers, DOE first determines the quantitative impacts using an annual cash-flow approach. This step includes both a short-term assessment—based on the cost and capital requirements during the period between the issuance of a regulation and when entities must comply with the regulation—and a long-term assessment over a 30-year analysis period. The industry-wide impacts analyzed include INPV (which values the industry on the basis of expected future cash flows), cash flows by year, changes in revenue and income, and other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of different DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and the PBP associated with new or amended standards. The LCC, specified separately in EPCA as one of the seven factors to be considered in determining the economic justification for a new or amended standard, 42 U.S.C. 6295(o)(2)(B)(i)(II), is discussed in the following section. For consumers

[15] The NIA spreadsheet model is described in section IV.G of this notice.

in the aggregate, DOE also calculates the national net present value of the economic impacts on consumers over the forecast period used in a particular rulemaking.

b. Life-Cycle Costs

The LCC is the sum of the purchase price of a product (including its installation) and the operating expense (including energy and maintenance expenditures) discounted over the lifetime of the product. For each battery charger product class and EPS representative unit, DOE calculated both LCC and LCC savings for various efficiency levels. The LCC analysis required a variety of inputs, such as product prices, electricity prices, product lifetimes, base case efficiency distributions, annual unit energy consumption, and discount rates.

To characterize variability in electricity pricing, DOE established regional differences in electricity prices. To account for uncertainty and variability in other inputs, such as discount rates, DOE used a distribution of values with probabilities assigned to each value. DOE then sampled the values of these inputs from the probability distributions for each consumer. The analysis produced a range of LCCs. A distinct advantage of this approach is that DOE can identify the percentage of consumers achieving LCC savings due to an increased energy conservation standard, in addition to the average LCC savings. DOE presents only average LCC savings in this NOPR; however, additional details showing the distribution of results can be found in chapter 8 and appendix 8B of the TSD.

In the LCC analysis, DOE determined the input values for a wide array of end-use applications that are powered by battery chargers or EPSs. There are typically multiple applications within every representative unit and product class that DOE analyzed. As such, DOE considered a wide array of input values for each unit analyzed. The lifetime, markups, base case market efficiency distribution, and unit energy consumption all vary based on the application. In the analysis, DOE sampled an application based on its shipment-weighting within the representative unit or product class. When an application was sampled, its unique inputs were selected for calculating the LCC and PBP. For further detail regarding application sampling, see appendix 8C of the TSD.

In its written comments, AHAM stated that the MIA and LCC calculations should be the most important considerations when determining where to set the standard level. (AHAM, No. 42 at p. 15) DOE considered many criteria when selecting the proposed standard level, including impacts on manufacturers, consumers, the Nation, and environmental impacts. DOE weighed the impacts from each of these analyses in determining the proposed standard level.

c. Energy Savings

While significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) DOE uses the NIA spreadsheet results in its consideration of total projected energy savings.

d. Lessening of Utility or Performance of Products

In establishing classes of products, and in evaluating design options and the impact of potential standard levels, DOE sought to develop standards for EPSs and battery chargers that would not lessen the utility or performance of these products. None of the TSLs presented in today's NOPR would substantially reduce the utility or performance of the products under consideration in the rulemaking. DOE received no comments that standards for battery chargers and EPSs would increase their size and reduce their convenience, increase the length of time to charge a product, shorten the intervals between chargers, or any other significant adverse impacts on consumer utility. However, based on DOE's preliminary examination of the information before it, including interviews with manufacturers, manufacturers may reduce the availability of features that increase energy use, such as LED indicator lights, in an effort to meet any standard levels promulgated as a result of this rulemaking. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Manufacturers indicated that these changes would only be made if their customers would not be averse to the change in utility. DOE requests interested party feedback, including any substantive data, regarding today's proposed standard levels and the potential for lessening of utility or performance related features.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider any lessening of competition that is likely to result from standards. It also directs the Attorney General of the United States (Attorney General) to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii)) DOE has transmitted a copy of today's proposed rule to the Attorney General and has requested that the Department of Justice (DOJ) provide its determination on this issue. DOE will address the Attorney General's determination, if any, in the final rule.

f. Need for National Energy Conservation

Certain benefits of the proposed standards are likely to be reflected in improvements to the security and reliability of the Nation's energy system. Reductions in the demand for electricity may also result in reduced costs for maintaining the reliability of the Nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the Nation's needed power generation capacity.

Energy savings from the proposed standards are also likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production. DOE reports the environmental effects from the proposed standards for battery chargers and EPSs, and from each TSL it considered, in the environmental assessment contained in chapter 15 of the TSD. DOE also reports estimates of the economic value of emissions reductions resulting from the considered TSLs in chapter 16 of the TSD.

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year of energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the payback period of potential standards for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable presumption test. However, DOE routinely conducts an economic analysis that considers the full range of impacts to the consumer, manufacturer,

Nation, and environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification. The rebuttable presumption payback calculation is discussed in section V.B.1.c of this NOPR and chapter 8 of the TSD.

IV. Methodology and Discussion

DOE used three spreadsheet tools to estimate the impact of today's proposed standards. The first spreadsheet calculates LCCs and payback periods of potential standards. The second provides shipments forecasts, and then calculates national energy savings and net present value impacts of potential standards. Finally, DOE assessed manufacturer impacts, largely through use of the Government Regulatory Impact Model (GRIM). All three spreadsheet tools will be made available online at the rulemaking Web site: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/battery_external.html.*

Additionally, DOE estimated the impacts on utilities and the environment that would be likely to result from the setting of standards for battery chargers and EPSs. DOE used a version of EIA's National Energy Modeling System (NEMS) for the utility and environmental analyses. The NEMS model simulates the energy sector of the U.S. economy. EIA uses NEMS to prepare its *Annual Energy Outlook,* a widely known energy forecast for the United States. The version of NEMS used for appliance standards analysis is called NEMS–BT,[16] and is based on the *AEO* version with minor modifications.[17] NEMS–BT offers a sophisticated picture of the effect of standards because it accounts for the interactions between the various energy supply and demand sectors and the economy as a whole.

A. Market and Technology Assessment

When beginning an energy conservation standards rulemaking, DOE develops information that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, and market characteristics. This activity includes both quantitative and qualitative assessments, based primarily on publicly available information. The subjects addressed in the market and technology assessment for this rulemaking include a determination of the scope of this rulemaking; product classes and manufacturers; quantities and types of products sold and offered for sale; retail market trends; regulatory and non-regulatory programs; and technologies or design options that could improve the energy efficiency of the product(s) under examination. See chapter 3 of the TSD for further detail.

1. Products Included in This Rulemaking

This section addresses the scope of coverage for today's proposal, stating which products would be subject to new or amended standards. The numerous comments DOE received on the scope of today's proposal are also summarized and addressed in this section.

a. External Power Supplies

The term ''external power supply'' refers to an external power supply circuit that is used to convert household electric current into DC current or lower-voltage AC current to operate a consumer product. (42 U.S.C. 6291(36)(A)) EPCA, as amended by EISA 2007, also prescribes the criteria for a subcategory of EPSs—those classified as Class A EPSs (or in context, ''Class A''). A Class A EPS is a device that:

1. Is designed to convert line voltage AC input into lower voltage AC or DC output;
2. is able to convert to only one AC or DC output voltage at a time;
3. is sold with, or intended to be used with, a separate end-use product that constitutes the primary load;
4. is contained in a separate physical enclosure from the end-use product;
5. is connected to the end-use product via a removable or hard-wired male/female electrical connection, cable, cord, or other wiring; and
6. has nameplate output power that is less than or equal to 250 watts.

See 42 U.S.C. 6291(36)(C)(i).

The Class A definition excludes any device that either (a) requires Federal Food and Drug Administration listing and approval as a medical device in accordance with section 513 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c) or (b) powers the charger of a detachable battery pack or charges the battery of a product that is fully or primarily motor operated. See 42 U.S.C. 6291(36)(C)(ii).

Based on DOE's examination of product information, all EPSs appear to share four of the six criteria under the Class A definition in that all are:

- Designed to convert line voltage AC input into lower voltage AC or DC output;
- Sold with, or intended to be used with, a separate end-use product that constitutes the primary load;
- Contained in a separate physical enclosure from the end-use product; and
- Connected to the end-use product via a removable or hard-wired male/female electrical connection, cable, cord, or other wiring.

DOE refers to an EPS that falls outside of Class A as a non-Class A EPS (or, in context, ''non-Class A''). Examples of such devices include EPSs that can convert power to more than one output voltage at a time (multiple voltage), EPSs that have nameplate output power exceeding 250 watts (high-power), EPSs used to power medical devices, and EPSs that provide power to the battery chargers of *m*otorized *a*pplications and *d*etachable *b*attery packs (MADB). After examining the potential for energy savings that could result from standards for non-Class A devices, DOE concluded that standards for these devices would be likely to result in significant energy savings and be technologically feasible and economically justified. 75 FR 27170 (May 14, 2010). Thus, DOE is examining the possibility of setting standards for all types of EPSs within the scope of today's notice.

In the preliminary analysis, DOE treated only those wall adapters that lacked charge control as EPSs; those with charge control were not considered to be EPSs. (Charge control relates to regulating the amount of current being delivered to a battery.) Under that approach, a given wall adapter without charge control capability could be considered both as an EPS and as a part of a battery charger. If that approach were adopted, such a wall adapter would be subject to whatever EPS standard that DOE may set and would also, indirectly, help the battery charger of which it is a part to meet whatever battery charger standard that DOE may set. In essence, the EPS would need to satisfy a prescribed level of efficiency, which could create certain design restrictions on manufacturers seeking to optimize the overall efficiency of the battery charger.

In the following paragraphs, DOE summarizes and addresses the comments it received on (1) whether to

[16] BT stands for DOE's Building Technologies Program.

[17] The EIA allows the use of the name ''NEMS'' to describe only an *AEO* version of the model without any modification to code or data. Because the present analysis entails some minor code modifications and runs the model under various policy scenarios that deviate from *AEO* assumptions, the name ''NEMS–BT'' refers to the model as used here. For more information on NEMS, refer to *The National Energy Modeling System: An Overview,* DOE/EIA–0581 (98) (Feb.1998), available at: *http://tonto.eia.doe.gov/FTPROOT/forecasting/058198.pdf.*

set EPS standards for wall adapters that are part of battery chargers, (2) whether the absence of charge control circuitry should be the basis for regulating such wall adapters, and (3) if so, appropriate methods for determining whether a given wall adapter contains charge control. DOE received a few comments urging DOE to regulate these types of EPSs—which are part of a battery charger system—as part of the overall battery charger and also as an EPS to help ensure that whatever EPS is used in such a charger system meets a minimum level of efficiency. Several other parties, however, objected to requiring that these EPSs also meet separate EPS standards. Comments focused mainly on MADB EPSs, but some pertained to EPSs generally. In response to these comments, DOE is proposing a new approach, namely, to evaluate whether an EPS can directly operate an end-use consumer product and to create a new product class for those EPSs that cannot directly operate an end-use consumer product. DOE is considering this approach in light of the substantial resistance by the industry to the initial approach presented during the preliminary analysis phase.

Energy efficiency advocates favored requiring certain EPSs that are part of battery chargers to also meet separate EPS standards—in particular, for those EPSs that do not perform charge control functions. PG&E, et al. expressed their strong support for this approach and cited research showing that improving the efficiency of a power supply helps improve the efficiency of a battery charger. In addition, PG&E commented that a single EPS definition (rather than one for Class A and another for non-Class A) would reduce the complexity of compliance and enforcement as well as the potential for loopholes. (PG&E, et al., No. 47 at p. 3–4) NEEP also expressed its support for this approach and added that DOE's initial research shows that there are a limited number of cases where EPSs would be regulated under both standards. (NEEP, No. 49 at pp. 1–2) The California IOUs and PG&E, et al. expressed their support for using the ENERGY STAR EPS definition to determine whether a wall adapter is an EPS. (California IOUs, No. 43 at p. 9; PG&E, *et al.,* No. 47 at p. 4)

AHAM, PTI, and Wahl Clipper agreed with DOE and the efficiency advocates that MADB wall adapters should be regulated, but not under multiple efficiency requirements. Instead, they urged DOE to regulate these items as battery charger components but not as EPSs. (AHAM, No. 42 at pp. 2, 3, 13; PTI, No. 45 at p. 4; Wahl, No. 53 at p. 1) PTI argued that a MADB wall adapter cannot be an EPS because it is not used ''to operate a consumer product.'' According to PTI, a MADB wall adapter operates a battery charger, but a battery charger is not a consumer product because battery chargers are not themselves ''distributed in commerce for personal use or consumption by individuals.'' Thus, in its view, MADB wall adapters are not EPSs. (PTI, No. 45 at pp. 3–4; Pub. Mtg. Tr., No. 57 at p. 74) AHAM argued that subjecting a product to multiple energy efficiency requirements (1) ''makes no sense,'' (2) could cause manufacturers to be in ''constant redesign mode'' if EPS and battery charger standards change at different times, and (3) would be an undue burden. (AHAM, No. 42 at pp. 4–5) AHAM contended further that the EPS active mode test is inappropriate and inaccurate for MADB wall adapters, as they are never used in the manner tested under that procedure. Consequently, in AHAM's view, requiring that these types of wall adapters be tested under the EPS test procedure would not enable DOE to meet its obligation to test products in a manner representative of their actual use. (AHAM, No. 42 at p. 6) Wahl Clipper echoed AHAM's concerns that the EPS test procedure is inappropriate for MADB wall adapters and noted that unsynchronized battery charger and EPS standards would force manufacturers to constantly redesign their products. Wahl Clipper added that manufacturers ''do not know if future standards levels will make it impossible to meet both regulations at the same time since there is no correlation between the two regulations.'' (Wahl, No. 53 at p. 1)

Others had similar concerns about setting standards for Class A devices that are part of battery chargers. CEA, Cobra Electronics, and Motorola objected to regulating any wall adapter as both an EPS and a component of a battery charger. These parties drew attention to the burden that multiple energy efficiency requirements would impose on manufacturers—small businesses in particular. CEA commented that its ''foremost concern is DOE's contemplation of a 'double jeopardy' regulatory situation whereby a single charging device would be subject to two different test procedures and two different sets of regulatory requirements,'' and added that such a situation would be ''unreasonable and unnecessary—and would be particularly onerous for small businesses.'' (CEA, No. 46 at pp. 1–2) Cobra Electronics, which markets and sells two-way radios and mobile navigation devices, commented that ''having to be regulated under two standards for a product which is infrequently used is an unreasonable burden for small companies when added to the burden of other recent regulations.'' (Cobra, No. 51 at p. 1) Motorola also agreed with CEA that the energy efficiency of EPSs should not be regulated in two different product categories (battery chargers and EPSs) and added that ''given the likely high performance standards that will be set for battery chargers, it would be nearly impossible for an external power supply to comprise part of a [standards-compliant] battery charger if it were not itself highly efficient.'' (Motorola, No. 48 at pp. 1–2)

AHAM also asserted that DOE risks overestimating energy savings if it does not determine how to remove the overlap between battery charger and EPS energy savings. AHAM emphasized the importance of accurately quantifying the extent to which energy savings from battery charger and EPS standards might overlap so that DOE can accurately project the potential energy savings from potential standards. (AHAM, Pub. Mtg. Tr., No. 57 at p. 112)

After carefully considering all of these comments, DOE has tentatively decided to adopt a broad scope and to propose an approach in which EPS standards could apply to all devices that meet the EPS definition prescribed by EPCA. See 42 U.S.C. 6291(36)(A). Those standards prescribed by Congress, namely, those for Class A devices, will remain in effect, and DOE, despite the objections raised by CEA and others, has no authority to remove these standards, although these standards could be amended to increase their stringency. With regard to non-Class A EPSs that are components of battery chargers, DOE has the option to propose new efficiency standards for these devices, including those devices that perform charge control functions.

To help it ascertain whether a given wall adapter performs charge control functions, DOE sought comment during the preliminary analysis phase on seven methods it presented to determine whether charge control is present in a wall adapter. See Preliminary TSD, appendix 3–C (detailing the methods DOE considered for determining whether a wall adapter contains charge control). In the preliminary analysis, DOE used a method it called ''Energy Star Inspection,'' which is based on parts (f) and (g) of the ENERGY STAR program's definition of an EPS. (''ENERGY STAR Program Requirements for Single Voltage External Ac-Dc and Ac-Ac Power Supplies, Eligibility Criteria (Version

2.0)'' [18]) This method considers certain easily observable physical characteristics of the wall adapter. Under this approach, a wall adapter that meets either of the following two criteria would be exempt from having to satisfy separate EPS standards and would instead be treated simply as a battery charger component: (1) The wall adapter has batteries or battery packs that physically attach directly (including those that are removable) to the power supply unit; or (2) the wall adapter has a battery chemistry or type selector switch AND an indicator light or state of charge meter.

As noted above, DOE received comments from the California IOUs and PG&E that supported using this method. PTI contended that DOE neglected to include MADB wall adapters in its preliminary assessment of the seven methods and requested that DOE include these products in any future analysis of possible charge control criteria. (PTI, No. 45 at p. 4) AHAM viewed the presence of charge control in a wall adapter as irrelevant. In its view, DOE should ask whether a given wall adapter is a MADB device, as all MADB wall adapters should be excluded from any EPS standards. (AHAM, No. 42 at p. 12) DOE received no other comments on the appropriateness of the Energy Star Inspection method or any of the six other methods it considered for identifying charge control in wall adapters.

At this time, DOE does not believe that such an exclusion from the EPS scope of coverage is warranted. It is DOE's understanding that most, if not all, of the MADB wall adapters that DOE proposes to add to the EPS scope of coverage are already subject to, and satisfy, the EPS standards currently in place in California. The California standard applies the same efficiency level that already applies to Class A EPSs nationwide. See California Energy Commission, ''2009 Appliance Efficiency Regulations,'' August 2009, CEC–400–2009–013, Table U–1 on p. 134. This efficiency level is referred to as Level IV in the International Efficiency Marking Protocol for External Power Supplies.[19] Comments from manufacturers and the California IOUs also support this finding. (California IOUs, No. 43 at p. 9) DOE is not aware of any products powered by battery chargers and EPSs that are not designed, manufactured, and packaged for distribution throughout the country.

It is DOE's understanding that products that use EPSs are designed, manufactured and packaged for distribution throughout the United States. Assuming that this understanding is correct, that fact indicates it is highly unlikely that manufacturers are producing one set of products for California and another set for the remaining states.

Notably, California's EPS standards apply only to devices that meet the ENERGY STAR definition of an EPS,[20] but do not meet the Class A definition established by EISA 2007. (California Energy Commission, ''2009 Appliance Efficiency Regulations,'' August 2009, CEC–400–2009–013) This situation stems in large part from California's adoption of the ENERGY STAR definition of an EPS when it first established energy conservation standards for these devices. Once Congress subsequently established standards for Class A EPSs, these Class A devices were removed from the scope of the California standards, leaving behind a set of devices California now refers to as ''state-regulated EPSs.'' As a result, these state-regulated EPSs are those devices that meet the ENERGY STAR definition of an EPS but do not fall under the Class A definition—specifically medical and MADB EPSs. (Multiple-voltage and high-power EPSs do not meet the ENERGY STAR definition but satisfy the Federal definition of an EPS.)

Due to differences between the ENERGY STAR and Federal statutory definitions of an EPS, there could be MADB devices that meet the Federal statutory definition that are not state-regulated. For example, a MADB EPS that has a battery type selector switch and an indicator light, and thus does not meet the ENERGY STAR definition of an EPS, would not be covered either by the current Federal or California standards. However, as a practical matter, DOE has not identified any MADB products that meet the Federal statutory definition of an EPS but do not also meet the ENERGY STAR definition. Thus, DOE is unaware of any MADB products that are not already subject to California energy efficiency standards that are within the EPS scope of coverage being contemplated today. DOE seeks comment on the accuracy of this belief and specific examples of such products, if they exist.

As noted above, some parties commented that requiring wall adapters that are part of battery chargers to be tested according to the EPS test procedure would impose an undue burden on manufacturers and would be inappropriate and result in inaccurate projections of estimated energy savings. In response to these comments, DOE notes that Congress prescribed the definitions of what constitutes an EPS. It did not provide for any exceptions that would exclude those EPSs that are components of another product. Given this situation, DOE must assume that Congress was aware of the fact that some battery chargers use EPSs and that it structured these statutory provisions to allow for the possibility that all EPSs would be required to meet some minimum level of efficiency that would also improve the efficiency of those products that used these more efficient devices.

As to how to measure the energy performance of these devices, DOE believes that these wall adapters can be evaluated using the existing EPS test procedure. See 10 CFR part 430, subpart B, appendix Z (detailing the procedure to follow when measuring the energy consumption of an EPS). In fact, this test procedure already is used to demonstrate compliance with existing Federal standards, in the case of Class A EPSs, and California standards, in the case of most MADB EPSs.[21] The test procedure is designed to assess the energy performance of an EPS while in active mode by measuring its active-mode efficiency at 25, 50, 75, and 100 percent of nameplate output current and then computing the simple arithmetic average of these four values. DOE believes that this test procedure yields a meaningful and representative measure of an EPS's active-mode efficiency because, along with the no-load mode power measurement, it

[18] *http://www.energystar.gov/ia/partners/product_specs/program_reqs/eps_prog_req.pdf.*

[19] U.S. EPA, ''International Efficiency Marking Protocol for External Power Supplies,'' October 2008, available at Docket No. 62.

[20] For the purposes of EPA's ENERGY STAR specification, an external power supply: (a) Is designed to convert line voltage ac input into lower voltage ac or dc output; (b) is able to convert to only one output voltage at a time; (c) is sold with, or intended to be used with, a separate end-use product that constitutes the primary load; (d) is contained in a separate physical enclosure1 from the end-use product; (e) is connected to the end-use product via a removable or hard-wired male/female electrical connection, cable, cord or other wiring; (f) does not have batteries or battery packs that physically attach directly (including those that are removable) to the power supply unit; (g) does not have a battery chemistry or type selector switch AND an indicator light or state of charge meter (*e.g.,* a product with a type selector switch AND a state of charge meter is excluded from this specification; a product with only an indicator light is still covered by this specification); and (h) has nameplate output power less than or equal to 250 watts. (See *http://www.energystar.gov/ia/partners/product_specs/program_reqs/eps_prog_req.pdf.*)

[21] California has adopted the Federal EPS test procedure as part of its regulatory requirements. (California Code of Regulations, Title 20, Section 1604).

covers the full range of outputs the device may be called on to provide in the field. This is true of EPSs that are not part of battery chargers as well as those that are. Thus, the EPS test procedure is appropriately applied to all EPSs, including those that are part of battery chargers.

Regarding PTI's argument that MADB wall adapters cannot, by definition, be EPSs because they operate battery chargers (which, in its view, are not consumer products), DOE disagrees. First, a battery charger is a consumer product by virtue of its inclusion by Congress under Part A of EPCA, 42 U.S.C. 6291(32), which addresses the regulation of consumer products. A consumer product is any article of a type that consumes or is designed to consume energy and which, to any significant extent, is distributed in commerce for personal use or consumption by individuals. See 42 U.S.C. 6291(1). The fact that a battery charger is a device that charges batteries for consumer products does not imply that chargers are not themselves consumer products, particularly since the definition contemplates the inclusion of those devices ''in other consumer products, '' which indicates that Congress viewed battery chargers as a separate, and individual, consumer product.

Second, EPSs are also consumer products for similar reasons.

Third, a MADB wall adapter satisfies the EPS definition since it ''convert[s] household electric current * * * *to operate a consumer product.''* See 42 U.S.C. 6291(36)(A) (emphasis added). Whether the MADB wall adapter is considered to operate a battery charger, which is a consumer product, or is considered to enable the end-use consumer product to operate (by supplying energy to the battery, which in turn operates the end-use product), a MADB wall adapter falls squarely within the EPS definition because it is taking household electric current to operate a consumer product. Accordingly, in DOE's view, MADB wall adapters are EPSs.

However, in view of the concerns raised by industry commenters, DOE believes there may be merit in distinguishing between a direct operation EPS and an indirect operation EPS. In particular, some EPSs are able to directly power an end-use consumer product (e.g., a wireless Internet router), while others cannot. This distinction may be necessary because DOE believes that less stringent EPS standards may be appropriate for indirect operation EPSs, which cannot directly operate an end-use consumer product. As explained later, DOE is proposing a means to differentiate between these two types of EPSs and to set different efficiency standards for them. DOE's proposed approach to regulating these products is described in more detail in sections IV.A.3 and V.C below.

DOE notes that while Congress amended EPCA to exempt certain EPSs used in security and life safety alarms and surveillance systems from the no-load mode power requirements that apply generally to Class A EPSs manufactured prior to July 1, 2017, see Public Law 111–360 (Jan. 4, 2011), such systems would be subject to the proposed active mode standards under consideration in this NOPR. See 42 U.S.C. 6295(u)(3)(E)(ii) (exempting security and life safety alarms and surveillance systems solely from no-load requirements).

DOE further notes that it has recently identified an important emerging EPS application: solid-state lighting (SSL). SSL technology is used in both the residential and commercial sectors for desk lamps, under-cabinet lighting, accent lighting, and many other purposes. Most of the SSL luminaires (fixtures) DOE has identified have integral power supplies, but some use power supplies that appear to meet the EPS definition. Some of these EPSs plug into an outlet, while others are hard wired into the electrical system. DOE has not yet identified any relevant technical differences between these EPSs and those for laptops, cell phones, and other electronic equipment that it has analyzed in detail as part of today's notice. DOE did not include SSL technology in its NOPR analysis because so few SSL products with EPSs were sold in 2009, the base year for shipments. However, because of the rapid proliferation of these products, DOE may consider revising its analysis to include SSL products in determining the final standards for EPSs. DOE invites comment on SSL EPSs, specifically on whether there are any differences between SSL EPSs and other EPSs that might warrant treating them as a separate product class.

b. Battery Chargers

A battery charger is a device that charges batteries for consumer products, including battery chargers embedded in other consumer products. (42 U.S.C. 6291(32)) All devices that meet this definition are within the scope of this rulemaking.

Like EPSs, battery chargers are used in conjunction with other end-use consumer products, such as cell phones and digital cameras. However, unlike EPSs, the battery charger definition prescribed by Congress is not limited solely to products powered from AC mains, i.e., those products that are plugged into a wall outlet. Further, battery chargers may be wholly embedded in another consumer product, wholly separate from another consumer product, or partially inside and partially outside another consumer product.

The California IOUs commented that they ''agree with DOE's wide-reaching consumer battery charger scope proposed in the preliminary [TSD],'' as they believe ''it will ultimately enable DOE to identify more cost-effective savings opportunities.'' (California IOUs, No. 43 at p. 2) Several other parties requested that DOE exclude golf car chargers and in-vehicle chargers from potential battery charger regulations.

Lester argued that ''golf cars do not meet the definition of a consumer product'' because they are primarily purchased by businesses rather than individuals, adding that the leading golf car manufacturer in the United States sells the vast majority of its golf cars to businesses rather than individuals—specifically 96 percent in 2009 and 97.5 percent in 2010. (Lester, No. 50 at p. 1)

As indicated above, the statutory definition of ''consumer product'' is a broad one. The extent of that breadth indicates that Congress had contemplated that this definition would encompass a wide variety of products. DOE's research indicates that approximately 10.6 percent of all new battery-powered golf cars sold each year in the United States are sold to individuals.[22] While DOE has no reason to question Lester's claim that the leading golf car manufacturer sells almost all of its golf cars to businesses, there are clearly manufacturers that sell a significant number of golf cars to individuals. Further, there is no identifiable difference between battery chargers for golf cars sold to individuals and those for golf cars sold to golf courses and other businesses. Thus, DOE continues to believe that golf cars are a type of consumer product. The distinction between consumer products and industrial equipment has been previously addressed by DOE. See *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/cce_faq.pdf.*

Lester also commented that in certain industrial applications the benefits of less energy-efficient, transformer-based

[22] International Market Solutions, *Golf Car-Type Vehicles and the Emerging Market for Small, Task-Oriented Vehicles in the United States; Trends 2000–2006, Forecasts to 2012,* December 2007. For more information about this report or to purchase a copy, email *icaworld@optonline.net.*

battery chargers outweigh those of more energy-efficient, switch mode battery chargers and that business managers are skilled in making the proper choice of battery charger based on a consideration of all the relevant factors. (Lester, No. 50 at pp. 2–3) In this context, Lester argued that businesses that purchase golf cars should be allowed to make their own decisions regarding the energy performance of the battery chargers they purchase, implying that there is no need for energy conservation standards for this product.

DOE notes that, in general, the energy conservation standards that it sets must satisfy a series of criteria. See generally 42 U.S.C. 6295(o). Among these criteria is the need to ensure the continued utility of the regulated product. Consistent with this requirement, DOE will take this factor into account when setting standards for battery chargers.

CEA commented that because in-vehicle chargers do not consume energy from the utility grid, they should not be covered by DOE. (CEA, No. 46 at p. 3) Motorola made similar statements and concluded that electronics that do not connect to the utility grid should be excluded from coverage. Motorola added that since DOE could not demonstrate cost savings associated with the potential efficiency standards that were under consideration for these products, these devices should not be regulated. (Motorola, No. 48 at pp. 2, 3) Cobra also expressed concerns over this product class and stated that quantifying the effect of battery chargers that obtain energy from 12V car batteries seems inaccurate and urged DOE to drop this product class from consideration. Cobra added that it was too difficult to accurately assess the economic impact of standards on 12V in-vehicle chargers because of difficulties inherent in accurately estimating gasoline savings. (Cobra, No. 51 at p. 3)

DOE is aware that consumer products ''designed solely for use in recreational vehicles and other mobile equipment'' are, by law, specifically excluded from coverage as consumer products. (42 U.S.C. 6292) Thus, a battery charger designed solely for use in recreational vehicles (RVs) and other mobile equipment would not be subject to battery charger standards. DOE has identified several consumer products—most prominently portable GPS navigators—that are commonly sold with 12V power adapters. However, DOE is not aware of any battery-operated consumer products that operate within a vehicle that cannot also be charged by alternate means, specifically from a 5V USB power source or from mains through a wall adapter. (For example, a GPS device may be plugged into a home computer via a USB port to receive power and to download data updates to the device's memory.) In other words, these products are not designed solely for use in recreational vehicles and other mobile equipment. DOE seeks comment on whether any products exist that can only be operated on 12V. DOE also seeks comment on whether a device that can be powered only from a 12V power outlet can be assumed to be designed solely for use in recreational vehicles (RVs) and other mobile equipment, or whether other 12V power sources exist that could power battery chargers. Lastly, DOE seeks comment on whether there are battery chargers with DC inputs other than 5V and 12V.

DOE also considered whether the above exclusion also applies to battery chargers that charge mobile equipment such as golf cars, wheelchairs, and electric scooters. DOE has preliminarily determined that this exclusion does not apply to those types of battery chargers, for two reasons. First, the statute, by specifying that a device be ''designed solely for use in'' a recreational vehicle or mobile equipment, appears to exclude only those devices that *obtain power from* recreational vehicles and other mobile equipment, not those that *provide power to* recreational vehicles and other mobile equipment. For example, a refrigerator designed solely for use in an RV obtains its power from the RV and, thus, is not a covered product, whereas a battery charger that is designed solely to charge the batteries of an electric bicycle obtains its power from another power source external to the bicycle (e.g., AC mains) and, thus, is a covered product. Second, EPCA excludes from coverage those consumer products ''designed solely for use *in* recreational vehicles and other mobile equipment.'' DOE has found that many battery chargers that charge mobile equipment are not contained entirely within that equipment, but rather operate only partly within, or entirely outside of, that equipment. (Examples of such chargers include those for many wheelchairs and lawn mowers.) In DOE's view, such a device is not operated solely *in* the mobile equipment and, thus, is not excluded from coverage. DOE welcomes comment on whether its understanding of how these devices operate is accurate.

As to the general concern regarding the calculation of potential benefits and savings from standards for in-vehicle chargers, DOE notes that it is no longer considering these savings in order to avoid any potential conflict with the exclusions set out in EPCA.

c. Wireless Power

The Wireless Power Consortium (WPC), which represents companies engaged in the emerging technology of wireless transfer of energy to both power and charge consumer products, commented that it does not believe that a ''wireless power transducer is either an EPS or a battery charger'' and recommended that a new category of inductive power supply be introduced for power supplies having inductive output. WPC explained that it is possible for the various components needed for these products, such as the transmitter transducers and receiver transducers, to be manufactured by different companies and sold separately. WPC further noted that it has not yet been determined how to address the independence of transmitter and receiver transducers in regards to overall system efficiency. As a result, ''requirements for efficiency should be deferred until the technology is better understood and methods for accurately measuring the efficiency are developed.'' (WPC, No. 42 at p. 2) Similarly, CEA requested that DOE categorize wireless power systems independently of battery chargers or EPSs to avoid regulatory mandates that could harm innovation in the emerging area of wireless power. CEA cited the technology's ability to charge or interact with multiple devices for multiple purposes simultaneously and to provide real-time power to appliances without batteries at a variety of power levels and transmitting efficiencies. (CEA, No. 46 at pp. 2–3) Philips, in reference to wireless power, expressed concern that DOE ''might inadvertently take regulatory action that could have the unintended effect of stifling this new technology.'' (Philips, No. 41 at p. 3).

DOE has observed that a number of new products have entered the marketplace in recent years that use wireless power technology in order to charge small consumer electronics products such as digital music players and mobile phones. Some of these products transfer power using induction while others use conduction or a galvanic (*i.e.,* current-carrying) connection. Products are also sold in a variety of different configurations, as noted in WPC's comment, with some transmitters and receivers sold separately, while others are sold together as a system.

There are a number of different types of products under the broad umbrella of ''wireless power,'' including both battery chargers and EPSs. DOE

analyzed one type, namely inductive battery chargers for wet environments (product class 1), and is proposing standards for these products today. In the preliminary analysis, DOE did not differentiate any other wireless power battery chargers from their conventional wired counterparts. DOE continues to believe that wireless power products that meet the definition of a battery charger, whether inductive or galvanic, are covered products.

However, DOE also agrees with CEA that the ability to charge multiple devices simultaneously and wirelessly offers a unique utility to consumers that could adversely and inadvertently be affected by standards. Because of this fact, and the immaturity of the technology, which collectively explain the absence of energy efficiency performance data on these products, DOE is not proposing standards for these types of products. Instead, DOE is proposing to create a separate product class for these products and to defer analysis of these products to a later standards rulemaking. Therefore, in today's rulemaking, DOE has reserved a section in the CFR for an 11th battery charger product class for products that use wireless power, in a dry environment, to charge consumer products.

With regard to the applicability of EPS standards to wireless power products, DOE reiterates that, by definition, an EPS ''is used to convert household electric current into DC current or lower-voltage AC current to operate a consumer product.'' (42 U.S.C. 6291(36)(A)) Some wireless power transmitter pads are sold by themselves and, thus, are consumer products in their own right. Other wireless power transmitter pads are sold along with a power receiver. Such a product constitutes a battery charger or a large portion of a battery charger, which also is a consumer product. Hence, in both cases, a wall adapter that provides power to the wireless power transmitter pad is an EPS.

d. Unique Products

Through additional market study of battery chargers and external power supplies since the preliminary analysis, DOE has found certain ''unique'' products that exhibit characteristics spanning several of the proposed BCEPS product classes, which make them difficult to classify within the scope of this rulemaking. These products possess traits inherent to both battery chargers and external power supplies and/or were designed for multiple simultaneous end-use consumer applications. In one example, a product DOE examined supplied power to an answering machine equipped with two charging stations for a wireless headset and a cordless handset. The power converter itself provided two separate outputs at the same nameplate output voltage, but with different current limits on each. One output was dedicated to charging the wireless headset and one output was used to power the answering machine and charge the cordless handset. Under the definitions DOE has used to classify battery chargers and EPSs to this point, this product could be considered a multiple-voltage EPS, a multi-port battery charger, or even a distinct single-voltage EPS and a battery charger depending on how the terms are applied.

DOE has invested considerable effort in properly analyzing the design tendencies of battery chargers and EPSs and believes that the vast majority of these products can be classified under the definitions of this proposed rule. DOE also believes that manufacturers, who are most familiar with how their products function and their intended use, should be able to appropriately determine what type of product they are selling and therefore which standard is appropriate based on DOE's proposed definitions. DOE requests any interested party information regarding products that may seem to fall into multiple product classes.

2. Market Assessment

a. Market Survey

To characterize the market for battery chargers and EPSs, DOE gathered information on the products that use them. DOE refers to these products as end-use consumer products or battery charger and EPS ''applications.'' This method was chosen for two reasons. First, battery chargers and EPSs are nearly always integrated into, bundled with, or otherwise intended to be used with a given application; therefore, the demand for applications drives the demand for battery chargers and EPSs. Second, because most battery chargers and EPSs are not stand-alone products, their usage profiles, energy consumption, and power requirements are all determined by the associated application.

DOE began the development of the preliminary analysis by analyzing online and brick-and-mortar retail outlets to determine which applications use battery chargers and EPSs and which battery charger and EPS technologies are most prevalent. Because the market for battery charger and EPS applications continues evolving, DOE updated the market survey to identify new applications and determine whether any relevant attributes of existing applications had changed significantly between the preliminary analysis and NOPR phases of the rulemaking.

In order to more accurately characterize the market for battery chargers and EPSs, DOE analyzed the following new applications: Media tablets, mobile Internet hotspots, smartphones, and wireless charging stations. To simplify the analysis, DOE removed external media drives, radio-controlled cars (hobby grade), and electronic pest repellents, all of which had low or unsupported shipments estimates. Battery chargers and EPSs for such applications and any other applications not explicitly analyzed in the market assessment would still be subject to the standards proposed in today's notice as long as they meet the definition of a covered product outlined in sections A.1.a and A.1.b, above. DOE also combined Wi-Fi access points with LAN equipment and merged weed trimmers and hedge trimmers into a single application (rechargeable garden care products). Finally, DOE identified EPS applications that now also commonly contain rechargeable batteries and use battery chargers, including LAN equipment and video game consoles. Chapter 3 of the TSD discusses all of these market assessment updates in further detail.

As noted in section IV.A.1.a above, DOE is considering including EPSs for SSL luminaires when it updates its analysis prior to issuing a final rule. DOE welcomes comment on the size of the market for these products, what proportion of SSL luminaires use EPSs, the efficiency of those EPSs, and usage patterns.

The California IOUs suggested that DOE consider two additional products for inclusion in battery charger product class 10 (AC output): emergency uninterruptible power supplies (UPSs) for cordless phones and emergency backup for security systems. (California IOUs, No. 43 at p. 7) Battery charger product class 10 is reserved for products that output AC power from the battery. UPSs were the only applications that met this criterion. Due to the small number of UPSs for cordless phones shipped annually, DOE did not include this application in its quantitative analysis for product class 10, despite its inclusion in this class. DOE recognizes that many home security systems contain rechargeable emergency backup batteries; however, because those backup batteries output DC power in order to operate the electronics in the security system, DOE placed these

chargers in product class 2. Although DOE recognizes that there are battery charger and EPS applications that it did not analyze, it tentatively believes that it has included within its analysis all major applications and, thus, has accurately characterized battery charger and EPS energy consumption and savings potential for each product class.

b. Non-Class A External Power Supplies

In addition, DOE expanded its analysis of applications that use non-Class A EPSs, including multiple-voltage and high-power EPSs, those EPSs that are used with medical devices, and EPSs used with (1) motor-operated battery charger applications and (2) the chargers of detachable batteries (i.e. collectively, MADB devices). In the preliminary analysis, DOE relied upon market information it had collected prior to publishing the notice of proposed determination for non-Class A EPSs in November 2009. Because updated information was available following the preliminary analysis, DOE revisited non-Class A EPSs while conducting its NOPR-phase market survey.

DOE found that multiple-voltage EPSs are used in fewer applications today than they were at the time of the first survey. Specifically, DOE removed inkjet imaging equipment from the multiple-voltage EPS product class, leaving the Xbox 360 (a video game console) as the only application for these devices.

DOE also reclassified medical EPSs based on the power requirements stated on retailer Web sites and updated lifetime and shipments estimates for medical devices. Philips commented that medical devices are expected to last longer than other consumer products and suggested using expected lifetimes of six to ten years for these products. (Philips, No. 41 at pp. 2–3) In the preliminary analysis, DOE estimated the product lifetimes for all medical devices analyzed to be greater than six years based on input from medical EPS manufacturers. Philips' comment, combined with independent market research, helped DOE to confirm its preliminary estimates for the NOPR. All of DOE's shipment and lifetime assumptions are documented in the market workbook that accompanies chapter 3 of the TSD.

c. Application Shipments

DOE relied on published market research to estimate base-year shipments for all applications. The base-year was changed from 2008 to 2009 for the NOPR, and application shipments were updated wherever supporting data were available. DOE estimated that in 2009 a total of 345 million EPSs and 437 million battery chargers shipped for final sale in the United States. Philips commented that DOE understated the shipments estimate for products in battery charger product class 1—inductive chargers for use in wet environments. In the preliminary analysis DOE assumed annual shipments of 5.35 million units, but Philips recommended using an estimate that is ''closer to 15 million'' units. (Philips, No. 41 at p. 2) Philips later explained how it derived this estimate from proprietary market data and its knowledge of the toothbrush market. In the NOPR-stage analysis, DOE used the shipments estimate recommended by Philips.

One significant update to the market assessment methodology was to estimate the proportion of battery chargers and EPSs used exclusively in the commercial sector. Commercial users pay commercial electricity rates, which are lower than residential electricity rates, and, therefore, the cost savings they would enjoy from an energy conservation standard would be lower. DOE identified applications that were likely to be used in office buildings, restaurants, or commercial construction sites, for example, in order to more accurately estimate energy cost savings in the life-cycle cost (LCC) analysis and national impact analysis. Data on commercial shipments were not readily available for most applications; therefore, DOE assumed similar commercial market shares among similar office and telecommunications applications. In the case of power tools, DOE assumed that commercial and residential spaces have similar repair and maintenance needs and, thus, used the ratio of commercial to residential floor space in the United States as a proxy for each sector's share of total power tool shipments. DOE seeks comment on which battery charger and EPS applications are used in the commercial sector, what fraction of shipments are to the commercial sector, and how product lifetimes and usage may differ between residential and commercial settings. (See Issue 2 under ''Issues on Which DOE Seeks Comment'' in section VII.E of this notice.) See chapter 3 of the TSD for more information on DOE's commercial sector market share estimates.

d. Efficiency Distributions

In the preliminary analysis, DOE estimated separate base-case market efficiency distributions for each battery charger product class and a single efficiency distribution for all Class A EPSs analyzed in the LCC and national impact analyses. AHAM commented that there are currently more EPSs in the market with efficiencies at levels higher than the EISA standard than what DOE estimated in the preliminary analysis; however, AHAM did not provide any specific data to support its claim. (AHAM, Pub. Mtg. Tr., No. 57 at p. 121) On the other hand, Cobra Electronics commented that most manufacturers of lower cost products use linear EPSs that just meet the current Federal standard rather than more efficient switch mode power supplies because of the higher costs involved with using that more efficient technology. (Cobra, No. 51 at p. 3) DOE incorporated these stakeholder comments into its updated efficiency distribution estimates but largely relied upon product testing and other market research to estimate base-case efficiency distributions. Further detail is contained in TSD chapter 3 and the accompanying analytical spreadsheet models.

In preparing today's NOPR, DOE revised its methodology for calculating efficiency distributions from test data. Instead of weighting results for each individual tested unit based on the shipments of the associated application, DOE gave equal weight to the results for each unit. For battery chargers and EPSs, DOE compared each test result to the proposed compliance curves for each candidate standard level (CSL). DOE then divided the number of units at a given CSL by the total number of tested units to estimate the percentage of units in the market. For select applications, DOE adjusted these distributions to reflect additional data or other market research about these applications. For EPSs, DOE also calculated the distribution of tested units within the ranges of nameplate output power corresponding to the representative units of analysis. Finally, DOE continued to calculate the distribution of tested units within each battery charger product class. DOE assigned an efficiency distribution profile to each EPS and battery charger application based on application-specific data where possible. For applications that DOE did not test, DOE relied on product class (for battery chargers) or representative unit (for EPSs) distributions for use in the energy use analysis and LCC analysis. DOE calculated a shipment-weighted average efficiency distribution for each product class for use in the national impact analysis. For more detail, see sections IV.E, IV.F, and IV.G below, which discuss the energy use, life-cycle cost, and national impact analyses, respectively.

3. Product Classes

When necessary, DOE divides covered products into classes by the type of energy used, the capacity of the product, and any other performance-related feature that justifies different standard levels, such as features affecting consumer utility. (42 U.S.C. 6295(q)) DOE then conducts its analysis and considers establishing or amending standards to provide separate standard levels for each product class.

At the preliminary analysis public meeting, DOE presented its rationale for creating 15 product classes for EPSs and 10 product classes for battery chargers. The product classes established for EPSs and battery chargers were based on various electrical characteristics shared by particular groups of products. As these electrical characteristics change, so does the utility and efficiency of the devices.

a. External Power Supply Product Classes

In the preliminary analysis, DOE raised the possibility of creating product classes based on nameplate output power and nameplate output voltage. This approach was based on the framework set by EISA 2007 and ENERGY STAR 2.0, which, collectively, grouped EPSs in this manner. DOE also divided EPS product classes based on whether a device met the Class A definition, its application type (motorized or medical), its output power, its output current type, its output voltages, and the battery type (detachable) of the associated application.

For Class A EPSs, the preliminary analysis divided these products into product classes A1, A2, A3, and A4 based on ENERGY STAR 2.0 criteria, which classify EPSs based on the type of power conversion (i.e., AC to DC or AC to AC) used and nameplate output voltage (i.e., low-voltage or basic-voltage). Each of these four product classes (A1–A4) from the preliminary analysis was created using these same criteria. The Class A EPS product classes were defined using the identical power conversion type and nameplate output voltage parameters as the ENERGY STAR program for EPSs.

Consistent with this initial approach, DOE is proposing to adopt the ENERGY STAR definition for low-voltage EPSs. DOE received no comments on these class structures when it first raised them during the preliminary analysis phase. As a result, DOE is proposing to adopt these class structures as part of today's proposal. Particularly, if a device has a nameplate output voltage of less than 6 volts and its nameplate output current is greater than or equal to 550 milliamps, DOE is proposing to classify that device as a low-voltage EPS. Additionally, a product that does not meet the criteria for being a low-voltage EPS would be classified as a basic-voltage EPS. DOE is also proposing definitions for AC to DC and AC to AC EPSs. If an EPS converts household electrical current to a lower voltage DC, DOE is proposing to classify that product as an AC to DC EPS. Similarly, DOE is proposing to classify a device that converts household electrical current to a lower voltage AC output as an AC to AC EPS.

DOE's preliminary analysis also explained how DOE was planning to organize non-Class A EPSs, which include medical, MADB, multiple-voltage, and high-power (nameplate output power >250 Watts) EPSs, into product classes. In the preliminary analysis, DOE created product classes M1, M2, M3, and M4 for medical EPSs and B1, B2, B3, and B4 for MADB EPSs. As with Class A EPSs, DOE considered four product classes for these two groups of devices based on combinations of power conversion type and voltage level. Additionally, for MADB products, DOE determined whether a wall adapter for a MADB application lacked charge control, as defined in appendix 3C of the preliminary TSD, and therefore was a MADB EPS. For multiple-voltage EPSs, DOE considered the creation of two product classes—X1 and X2—and for high-power EPSs, it considered only one, H1. In response to the preliminary analysis, DOE received comments on the product class definitions presented for MADB and multiple-voltage EPSs. The issues raised are discussed below.

Indirect Versus Direct Operation External Power Supplies

As noted in section IV.A.1, interested parties raised concerns with DOE's proposed approach in the preliminary analysis regarding MADB EPSs. Based on these comments, DOE revised its approach and is no longer using the charge control method it had considered using during the preliminary analysis. Instead, DOE is proposing a simpler approach, which would require a manufacturer to determine whether an EPS can only ''indirectly operate'' an application.

DOE is proposing to define an indirect operation EPS as an EPS that cannot power a consumer product (other than a battery charger) without the assistance of a battery. In other words, if an end-use product only functions when drawing power from a battery, the EPS associated with that product is classified as an indirect operation EPS. Because the EPS must first deliver power and charge the battery before the end-use product can function as intended, DOE considers this device an indirect operation EPS and has defined a separate product class, N, for all such devices. Conversely, if the battery's charge status does not impact the end-use product's ability to operate as intended and the end-use product can function using only power from the EPS, DOE is proposing to treat that wall adapter as a direct operation EPS.

DOE's initial approach for determining whether a given EPS has direct operation capability involved removing the battery from the application and attempting to operate the application using only power from the EPS. While this approach gave the most definitive EPS classifications, this procedure had the potential of creating complications during testing since it can frequently necessitate the removal of integral batteries prior to testing. The removal of such batteries can often require access to internal circuitry via sealed moldings capable of shattering and damaging the application.

DOE then developed a new method of testing to help minimize both the risk of damage to the application and the accompanying complexity associated with the removal of the internal batteries while ensuring testing accuracy. This approach would require product testers to determine whether an EPS can operate an end-use product once the associated battery has been fully discharged. Based on product testing results, DOE believes that direct operation EPSs will be able to power the application regardless of the state of the battery while indirect-operation EPSs will need to charge the battery before the application can be used as intended. Comparing the time required for an application to operate once power is applied during fully discharged and fully charged battery conditions would provide a reliable indication of whether a given EPS is an indirect or direct operation device. Recording the time for the application to reach its intended functionality is necessary because certain applications, such as smartphones, contain firmware that can delay the EPS from operating the end-use product as expected. If the application takes significantly longer to operate once the battery has been fully discharged, DOE would view this EPS as one that indirectly operates the end-use consumer product and classify it as part of product class N. Using this methodology, DOE was also able to evaluate a given product's EPS as it was

intended to be used while limiting the burden of the test. The full procedure is detailed in Appendix 3C of the TSD and in the rule language section of today's notice.

Product class N that DOE is proposing in today's notice contains both Class A and non-Class A EPSs. DOE believes that these two groups of devices are technically equivalent, i.e., there is no difference in performance-related features between the two groups that would justify different standard levels for the two groups. (42 U.S.C. 6295(q)) Because of this technical equivalency, DOE grouped these EPSs into one product class for analysis. DOE seeks comment on whether there are any performance-related features characteristic of either Class A or non-Class A devices (but not both) in product class N that would help justify analyzing the two groups separately.

If a product is capable of directly operating its end-use consumer product, other characteristics must be examined to determine the appropriate product class. In its preliminary analysis, DOE separated product classes based on combinations of their power conversion type and voltage level. DOE is proposing to use these class definitions based on those combinations but with one change. As shown in Table IV–1, DOE used four product classes for each combination of power conversion type and voltage level in the preliminary analysis for Class A EPSs, MADB EPSs, and medical EPSs. DOE also considered applying the results of the Class A engineering analysis directly to medical and MADB EPSs, meaning there would be no difference in the cost-efficiency curves or the product class divisions for Class A, medical, or MADB EPSs. DOE believed this was a valid approach because the costs associated with improving the efficiency of a medical or MADB EPS were identical to those associated with the same improvements in a comparable Class A EPS as all three types are technically equivalent. Due to these similarities, DOE believed that Class A, medical, and MADB EPSs should be evaluated identically. Interested parties did not comment on this simplified approach after it was presented during the preliminary analysis public meeting.

Today's NOPR proposes eliminating the disaggregation of Class A, medical, and MADB EPSs in its product class definitions. This consolidation would reduce the number of product classes covering these products from 12 in the preliminary analysis to five (B, C, D, E, and N) in the NOPR. Under this consolidated approach, product class B includes direct operation EPSs that are AC/DC and basic-voltage (i.e. do not qualify as low-voltage); product class C includes direct operation EPSs that are AC/DC and low-voltage (i.e. nameplate output voltage less than 6 volts and nameplate output current greater than or equal to 550 milliamps.); product class D includes direct operation EPSs that are AC/AC and basic-voltage; product class E includes direct operation EPSs that are AC/AC and low-voltage; and product class N includes all indirect operation EPSs.

TABLE IV—1 PRELIMINARY ANALYSIS PRODUCT CLASSES

		Voltage level	
		Basic (not low-voltage)	Low (<6V, ≥550mA outputs)
Power Conversion Type	AC input, DC output	A1, B1, M1 (now B)	A2, B2, M2 (now C).
	AC input, AC output	A3, B3, M3 (now D)	A4, B4, M4 (now E).

Multiple-Voltage External Power Supplies

In the preliminary analysis, DOE considered combining product classes X1 (<100 Watts) and X2 (≥100 Watts) into one product class for all multiple-voltage EPSs. DOE is proposing to define multiple-voltage EPS as devices that convert household electric current into multiple simultaneous output currents. The California IOUs were in favor of creating a single product class for multiple-voltage EPSs because ''the types of products that may occupy this category in the future are unknown.'' (California IOUs, No. 43 at p. 9). DOE's initial approach was based on the view that these product classes corresponded to the two main products already in the market in 2008: multi-function devices in X1 and video game consoles in X2. As of 2010, multi-function devices no longer use multiple-voltage EPSs, leaving only one main product category and the need for only one product class. Therefore, DOE has consolidated product classes X1 and X2 into product class X for all multiple-voltage EPSs, which are EPSs that can directly operate a consumer product and simultaneously produce multiple output voltages.

High-Power External Power Supplies

DOE examined only one product class for high-power EPSs during the preliminary analysis because only one relevant consumer application existed at the time the analysis was prepared. DOE received no comments on this proposal from interested parties and, therefore, maintained one product class for high-power EPSs in the NOPR. This product class includes EPSs that can directly operate a consumer product and have a nameplate output power greater than 250 watts. To maintain consistency in the naming convention for the NOPR, product class H1 is now product class H. All product classes developed for the NOPR are shown in Table IV–2.

TABLE IV—2 EXTERNAL POWER SUPPLY PRODUCT CLASSES USED IN THE NOPR

Product class description	Preliminary analysis external power supply product classes	NOPR external power supply product classes
AC/DC Basic-Voltage	A1, M1, B1 (some)	B
AC/DC Low-Voltage	A2, M2, B2 (some)	C
AC/AC Basic-Voltage	A3, M3, B3 (some)	D
AC/AC Low-Voltage	A4, M4, B4 (some)	E
Multiple Voltage	X1, X2	X
High-Power	H1	H

TABLE IV—2 EXTERNAL POWER SUPPLY PRODUCT CLASSES USED IN THE NOPR—Continued

Product class description	Preliminary analysis external power supply product classes	NOPR external power supply product classes
Indirect Operation	B1, B2, B3, B4 (most)	N

b. Battery Charger Product Classes

In the preliminary analysis, DOE used five electrical characteristics to disaggregate product classes—battery voltage, battery energy, input and output characteristics (e.g. inductive charging capabilities),[23] input voltage type (line AC or low-voltage DC), and AC output. DOE explained its reasoning for using this approach in the preliminary analysis. This reasoning is also detailed in chapter 3 of the TSD.

First, DOE explained that battery voltage greatly affects consumer utility because the electronics of a portable consumer product are designed to require a particular battery voltage. If a change occurs in battery voltage, it is possible that the end-use application will be rendered inoperable. Furthermore, battery chargers that charge lower-voltage (voltage equals the product of current (I) and resistance (R)) batteries tend to be less efficient because they use higher currents, which increase I^2R losses for the same given output power. (I^2R, the product of current and voltage, equates to power and refers to losses directly related to current flow.) These devices could be disproportionately affected by an equally stringent standard level across all voltages. Consequently, DOE opted to use battery voltage as a characteristic for setting product classes. See preliminary analysis TSD Chapter 3.

Second, while battery voltage specifies which consumer product applications can be used with a particular battery (and its corresponding battery charger), battery energy describes the total amount of work that the battery can perform, regardless of the application, and is also a measure of utility. Furthermore, because a battery charger must provide enough output power to replenish the energy discharged during use, the capacity and physical size of the battery charger depend on the amount of battery energy.[24] By using battery energy as a proxy for output power, only a single criterion, rather than two, is required for classifying battery chargers. This approach has the benefit of simplifying any energy conservation standards that DOE may set while sufficiently accounting for any differences in battery charger capacity or utility in the standards analysis. Additional details on this approach can be found in TSD chapter 3.

Third, input and output characteristics are important because input voltage can have an impact on efficiency and dictate where a battery charger may be used, this impact may affect end user utility. With respect to inductive chargers, the utility offered by this characteristic is providing reliable and safe electrical power to a device during operation. In wet environments, such as a bathroom where an electric toothbrush is used, these chargers ensure that the user is isolated from mains current by transferring power to the battery through magnetic induction rather than using a galvanic (i.e. current carrying) connection. DOE also identified numerous battery chargers that do not include a wall adapter, connecting instead to a personal computer's USB port or a car's cigarette lighter receptacle. Because input voltage can impact battery charger performance and determine where the battery charger can be used, which affects the utility of the product, DOE defined product classes using this criterion in the preliminary TSD. In response to the preliminary analysis and during manufacturer interviews, DOE received numerous comments regarding these product classes, discussed below, and the results of which are summarized in Table IV–3.

[23] Inductive charging is a utility-related characteristic designed to promote cleanliness and guarantee uninterrupted operation of the battery charger in a wet environment. In wet environments, such as a bathroom where an electric toothbrush is used, these chargers ensure that the user is isolated from mains current by transferring power to the battery through magnetic induction rather than using a galvanic (i.e. current carrying) connection.

[24] The minimum output power is a product of battery energy and charge rate. However, while charge rates rarely fall outside the range of 1 °C to 10 °C, the battery energy of consumer battery chargers can span over 5 orders of magnitude from 1 watt-hour to over 10,000 watt-hours. Therefore, the output power is more dependent on battery energy than charge rates.

Table IV-3 Battery Charger Product Classes

Product Class #	Input / Output Type	Battery Energy (Wh)	Special Characteristic or Battery Voltage
1	AC In, DC Out	< 100	Inductive Connection
2			< 4 V
3			4 – 10 V
4			> 10 V
5		100–3000	< 20 V
6			≥ 20 V
7		> 3000	-
8	DC In, DC Out	-	< 9 V Input
9		-	≥ 9 V Input
10a	AC In, AC Out	-	Basic (i.e. no Automatic Voltage Regulation)
10b		-	Contains Automatic Voltage Regulation

During the preliminary analysis public meeting, Philips questioned whether DOE could consider product classes based on usage, topology (i.e., the general circuit layout), or price. (Philips, Pub. Mtg. Tr., No. 37 at pp. 126–130) Philips and AHAM stated that they believed DOE could disaggregate infrequently used products into a separate product class and urged DOE to do so. (Philips, No. 43 at p. 3; AHAM, Pub. Mtg. Tr., No. 37 at pp 154–156) AHAM added that, in its view, DOE has always established new product classes based on characteristics, designs, or functions that affect energy use. (AHAM, No. 44 at p. 6) CEA expressed similar concerns as Philips and AHAM, suggesting that DOE did not adequately deal with infrequently charged battery chargers. (CEA, No. 48 at p. 2) Earthjustice disagreed with AHAM's suggestion and stated that usage is not a feature of a battery charger, but rather a characteristic of the end user of the application that the battery charger accompanies. (Earthjustice, Pub. Mtg. Tr., No., No. 37 at p. 131) Fulton Innovation inquired whether topology is considered as part of the utility of a product and, hence, a factor for setting product classes. (Fulton Innovation, Pub. Mtg. Tr., No., 37 at pp. 134–135) Finally, Stanley Black and Decker asked whether pricing could be considered a utility-related feature to use in defining product classes. (SBD, Pub. Mtg. Tr., No., 37 at pp. 133–134)

DOE does not consider usage, topology, and pricing as utility-related features for determining separate product classes. These factors were considered separately, however, in setting potential energy efficiency levels for these products. Usage defines how a battery charger is used, which is inherently tied to the end-use product with which the battery charger is packaged. While changes in usage will affect the energy use of a battery charger, they do not affect the actual performance of the battery charger, which is the relevant factor DOE must consider when establishing a separate class for these products. See 42 U.S.C. 6295(q). Product usage is fundamental to the analyses that DOE performs for battery chargers, particularly for the LCC and NIA. For each application, DOE estimates the time spent in each mode of operation in order to estimate unit energy consumption. Further details on usage and DOE's assumptions are presented in the energy usage section, IV.E, of today's notice.

Although DOE does not explicitly define product classes for battery chargers based on topology, it considered topologies when it presented its initial product classes. Primarily, DOE uses battery energy as a defining characteristic for battery charger product classes. Because of the extremely wide range of different battery energies, DOE needed to establish meaningful ranges of battery energies for each product class. As outlined in the preliminary analysis TSD (Chapter 3), when battery energy changes, the topologies, or general circuit designs that are most appropriate also change. Therefore, as part of today's NOPR, DOE examined the potential impacts on topologies when it defined the ranges of battery energies that were considered.

Finally, price was also not included in the definitions of DOE's battery charger product class because it is not a utility-related feature for the purposes of EPCA. DOE understands commenters concerns that some products are marketed at various price points and that energy efficiency standards have the potential to raise those price points or eliminate some all together. However, price does not directly affect device performance. DOE acknowledges that price is an important consideration for consumers and although price is not considered when setting product classes, DOE does account for such consumer impacts in the LCC and PBP analyses conducted in support of this rulemaking.

Medical and Single-Cell Battery Chargers

Interested parties also advocated separating out particular products into

their own classes. Philips suggested that DOE consider creating a separate product class for medical battery chargers, as is done for EPSs. (Philips, No. 43 at p. 2) They mentioned that medical battery chargers cannot use off the shelf consumer grade battery chargers and must undergo a special regulatory process that adds testing requirements and costs. (Philips, No. 43 at p. 3) At the public meeting, Wahl Clipper suggested that DOE should have an additional product class for applications that use single-cell batteries. (Wahl Clipper, Pub. Mtg. Tr., No. 37 at p. 158) Neither commenter provided any data supporting their views.

While DOE appreciates the suggestions from Philips and Wahl about segregating out additional product classes from DOE's current definitions, DOE is not inclined to adopt them at this time based on the current information before it. As with EPSs, DOE believes that even though medical battery chargers must adhere to more stringent requirements than other battery chargers, the cost-efficiency relationship will not be appreciably different to merit separate standards and product classes. In the preliminary analysis, DOE found that there was virtually no difference in the cost effectiveness of improving medical EPS efficiency versus improving Class A EPS efficiency. Moreover, DOE is unaware of any capacity or performance-related feature present in medical battery chargers that would permit the creation of a special class for these devices for purposes of setting separate energy conservation standards. As a result, despite the additional safety testing that medical EPSs may have to go through for certification, DOE has tentatively consolidated the two groups and no longer distinguishes between them in its product class definitions for today's proposal. Based on the information that DOE receives during the course of the comment period, it may reconsider this approach for the final rule.

As for the single-cell batteries that Wahl Clipper referenced, DOE believes that its proposed scaling methodology sufficiently addresses Wahl Clipper's concerns and allows chargers that use single-cell batteries to remain in product class 2 (low-energy, low-voltage). As discussed in section IV.C.2.j, when battery energy approaches zero, DOE levels off unit energy consumption (UEC) requirements to prevent the adoption of overly stringent requirements that could eliminate such products. (UEC is a relevant factor because it is the metric which DOE is proposing to regulate for these devices.)

Motorized Application Detachable Battery (MADB) Battery Chargers

PTI also submitted comments in which it recommended that DOE revise its 10 battery charger product classes presented in the preliminary analysis. PTI stated that because the statute provides language for DOE to separate MADB's when referring to EPS's, DOE should extend this distinction to battery chargers and separate MADB battery chargers from consumer electronics battery chargers. PTI claimed that even though MADB and consumer electronics battery chargers share a common range of battery voltages and energies, the two are vastly different in other ways and urged DOE to create different classes for MADB and non-MADB products across the same battery voltages and energies. PTI added that part of the problem with grouping the two product types together is that consumer electronics promote features such as smaller size and weight and longer run-time—all of which are added benefits related to improving a product's energy efficiency. (PTI, No. 47 at p. 13) In other words, in their view, consumer electronics have already begun to move towards more efficient battery chargers and manufacturers have been able to pass along the additional costs to consumers because the use of more efficient chargers has led to the addition of desirable features, such as reduced notebook computer weight. (PTI, No. 47 at pp. 13)

PTI also disagreed with DOE's initial plan to group power tools with consumer electronics because shipments of consumer electronics, such as laptops, greatly outnumber MADB product shipments. Because a shipment-weighted average is employed by DOE in its analysis, the calculated effects would be dominated by the effects of the products that have the greatest number of shipments. (PTI, No. 47 at p. 6) Since the shipment quantities of consumer electronic products far outnumber those for MADB products, PTI asserted that the calculations derived by DOE would be dominated by the inclusion of consumer electronics products and skew the overall effects projected to occur with a given standard for these products. (PTI, No. 47 at pp. 6 and 13)

In addition, in PTI's view, the incremental cost estimates to achieve higher efficiencies which have been included in the life cycle cost analysis, are a much smaller percentage of the higher-priced products than they would be for many do-it-yourself power tools. (PTI, No. 47 at p. 13) As a result, PTI asserted that do-it-yourself power tool users are likely to be more sensitive to price changes even though the incremental change may be similar to higher priced products, such as consumer electronics. PTI added that manufacturers, and ultimately consumers, would be better served by a class that included only appliances or, alternatively, have appliances more fairly represented in the averages. In its view, making this change would generate CSLs that more appropriately address the realizable efficiency improvements and strike a better balance between the realities of power tool manufacturers and the energy savings gained by the consumer. (PTI, No. 47 at p. 13) Therefore, PTI recommended that DOE should calculate CSL and LCC information based on sub-classifications of product classes 3 (AC in/DC out, <100 Wh, 4–10 V battery chargers) and 4 (AC in/DC out, <100Wh, >10V battery chargers) for MADB and non-MADB devices. (PTI, No. 47 at p. 7)

Conversely, the California IOUs supported DOE's decision to group both power tools (i.e. MADB battery chargers) and laptops (i.e. consumer electronics battery chargers) in the same product classes for the purposes of this analysis (California IOUs, No. 45 at p. 6) They also expressed support for DOE's proposal in the preliminary analysis that usage profiles should not be used when creating product classes. (California IOUs, No. 45 at p. 8) In separate comments, Pacific Gas and Electric and others urged DOE to reduce the number of product classes from 10 to 4, and reorganize product classes 2 through 7 (AC in/DC out battery chargers) into one new product class. (PG&E, et al., No. 49 at pp. 2–3)

After considering these comments, DOE re-examined the UEC data from its engineering analysis for product classes 3 and 4. DOE found that when MADB applications were removed from product classes 3 and 4, the UECs generated for the removed group of MADB applications were not significantly different (<10 percent) than those DOE had presented for the product class as a whole. Relative to the reductions in UEC when incrementing CSLs, DOE considered these differences much less significant than it initially suspected. Furthermore, for the NOPR analysis, DOE altered some of its assumptions for the LCC analysis. In the preliminary analysis, DOE assumed the same efficiency distribution for all applications within a product class. For example, in product class 4, laptops were assumed to have the same percentage of their shipments at CSL 0, 1, and 2 as power tools and all other applications in that product class. As

mentioned by manufacturers and determined by DOE's testing program for battery chargers, some products, mainly consumer electronics, have already begun increasing the efficiency of their products because doing so is desirable to the end user. As a result, DOE has altered its assumption that all applications within a product class have the same distribution of efficiency. Instead, DOE now makes more tailored assumptions about efficiency distributions for different applications based on information provided by manufacturers, publicly available data, and DOE's own test results.

This new assumption will alter the economics of DOE's standards analysis and more accurately illustrate the effects on consumers for the varying consumer types in each product class. Additionally, the individual LCC results for each application are available in appendix 8B of the TSD. Similarly, just as DOE is not persuaded to disaggregate certain product classes, DOE is also not persuaded to aggregate any additional product classes, as suggested by PG&E. DOE initially considered using separate product classes in the preliminary analysis because the different battery voltage and energy ratings that define these classes imply a certain utility and deviation from those ratings will likely lead to different cost-efficiency relationships and efficiency levels. These differences will also lead to different effects on consumers, which will likely support different energy conservation standard levels.

Uninterruptible Power Supply (UPS) Battery Chargers

Uninterruptible power supplies are used only for emergency situations when power is lost and users need time to safely shut down their electronic devices. Consequently, these devices generally do not fully charge a completely depleted battery. Additionally, these devices typically use integral batteries and generally remain on continuously. Because of its role in providing power in emergency situations, the battery chargers within these devices primarily remain in maintenance mode, which constitutes the most relevant portion of its energy consumption.

During manufacturer interviews with UPS producers, DOE discussed additional functionality as it pertains to these devices. Manufacturers suggested that DOE classify UPSs into three different categories: Basic UPSs, UPSs that have automatic voltage regulation (AVR), and UPSs that are extended-run capable (i.e., the ability to attach a second battery to increase battery capacity within the UPS). After further investigation, DOE decided that two of these categories were appropriate and warranted separate standards, but the third category (extended-run UPSs), as it was simply representative of a change in battery capacity, could be accounted for through its scaling methodology.

AVR UPSs use circuitry that monitors input voltage from the wall and ensures that all products plugged into the UPS see a steady flow of voltage despite any fluctuations at the wall. This circuitry provides added utility to the consumer by preventing any spikes or dips in voltage, but it comes at the expense of additional power consumption by the UPS. This additional power consumption of the UPS is always on when the device is plugged in and it is indistinguishable from the power consumption due to the battery charger within the UPS.

To account for these characteristics, DOE is proposing to divide preliminary analysis product class 10 into two product classes, one for basic UPSs and one for UPSs that contain AVR circuitry. Even though DOE is proposing two product classes for these categories of UPSs, DOE believes that the underlying engineering analysis and other downstream analyses for both product classes is the same. DOE believes that this is an appropriate assumption because the addition of AVR is irrelevant to UPS battery charger power consumption, yet it cannot be disaggregated from UPS battery charger power consumption due to the integrated nature of the circuitry components within a UPS. In other words, there is no technical reason why the battery charger within a basic UPS should be different from the battery charger within a UPS with AVR functionality. However, when the latter is tested via DOE's battery charger test procedure, it will demonstrate a higher maintenance mode power consumption and will not be able to meet as stringent an energy efficiency standard as a basic UPS. Consequently, for all of DOE's analyses in today's NOPR, battery chargers for UPSs are examined as an aggregated product class, product class 10, rather than separately, however the proposed standard for each product class is different. DOE seeks comment on its analytical approach and whether separate classes are appropriate in this context.

4. Technology Assessment

In the technology assessment, DOE identifies technology options that appear to be feasible to improve product efficiency. This assessment provides the technical background and structure on which DOE bases its screening and engineering analyses. The following discussion provides an overview of the technology assessment for EPSs and battery chargers. Chapter 3 of the TSD provides additional detail and descriptions of the basic construction and operation of EPSs and battery chargers, followed by a discussion of technology options to improve their efficiency and power consumption in various modes.

a. EPS Efficiency Metrics

On December 8, 2006, DOE codified a test procedure final rule for single output-voltage EPSs in Appendix Z to Subpart B of 10 CFR Part 430 (''Uniform Test Method for Measuring the Energy Consumption of External Power Supplies.'') See 71 FR 71340. On June 1, 2011, DOE added a test procedure to cover multiple output-voltage EPSs in Appendix Z to Subpart B of 10 CFR Part 430 (''Uniform Test Method for Measuring the Energy Consumption of External Power Supplies.'') 76 FR 31750. DOE's test procedure, based on the CEC EPS test procedure, yields two measurements: Active mode efficiency and no-load mode (standby mode) power consumption.

Active-mode efficiency is the ratio of output power to input power. For single-voltage EPSs, the DOE test procedure averages the efficiency at four loading conditions—25, 50, 75, and 100 percent of maximum rated output current—to assess the performance of an EPS when powering diverse loads. For multiple-voltage EPSs, the test procedure provides those four metrics individually, which DOE is considering averaging when setting the efficiency level measurements for these types of devices. The test procedure also specifies how to measure the power consumption of the EPS when disconnected from the consumer product, which is termed ''no-load'' power consumption because the EPS outputs zero percent of the maximum rated output current to the application.

To develop the analysis and to help establish a framework for setting EPS standards, DOE considered both combining average active-mode efficiency and no-load power into a single metric, such as unit energy consumption (i.e. UEC), and maintaining separate metrics for each. For the preliminary analysis, DOE chose to evaluate EPSs using the two metrics separately. Today's NOPR proposes continuing to use this method when setting standards for these products. Using a single metric that combines active-mode efficiency and no-load power consumption to determine the

standard may inadvertently permit the ''backsliding'' of the standards established by EISA 2007. Specifically, because a combined metric would regulate the overall energy consumption of the EPS as the aggregation of active-mode efficiency and no-load power, that approach could permit the performance of one metric to drop below the EISA 2007 level if it is sufficiently offset by an improvement in the other metric. Such a result would, in DOE's view, constitute a backsliding of the standards and would violate EPCA's prohibition from setting such a level. DOE's proposed approach seeks to avoid this result.

The DOE test procedure for multiple-voltage EPSs yields five values: no-load power consumption as well as efficiency at 25, 50, 75, and 100 percent of maximum load. See 76 FR 31750 (June 1, 2011)(noting DOE's recently added procedures for multiple voltage EPSs codified at section 4.2 of appendix Z of subpart B to part 430 of the CFR). In the preliminary analysis, DOE examined the possibility of averaging the four efficiency values to create an average efficiency metric for multiple-voltage EPSs, similar to the approach followed for single-voltage EPSs. Alternatively, DOE introduced the idea of averaging the efficiency measurements at 50 percent and 75 percent of maximum load because the only known application that currently uses a multiple voltage EPS, a video game console, operates most often between those loading conditions. DOE sought comment from interested parties on these two approaches.

The California IOUs commented that the test metric should be an ''average of 25%, 50%, 75%, and 100% of rated output power, similar to the approach taken for single voltage EPSs.'' The California IOUs viewed this approach as best rather than basing the multiple-voltage test procedure on the loading profile of a single application which could decrease the applicability of any standard since ''the types of products that may occupy this category in the future are unknown''. (California IOUs, No. 43 at p. 9)

Though it is aware of only one consumer product using multiple-voltage EPSs, DOE believes that evaluating multiple-voltage EPSs using an average-efficiency metric (based on the efficiencies at 25%, 50%, 75%, and 100% of each output's normalized maximum nameplate output power) would allow a future standard to be applicable to a diverse range of products as it would not be based solely on the loading profile of a single EPS application. Therefore, DOE evaluated multiple-voltage EPSs using no-load mode power consumption and an average active-mode efficiency metric based on the measured efficiencies at 25%, 50%, 75%, and 100% of rated output power in developing the proposed energy conservation standards for these products. DOE requests feedback on this proposed approach to determining the average efficiency for multiple-voltage EPSs.

b. EPS Technology Options

DOE considered seven technology options, fully detailed in Chapter 3 of the TSD, which may improve the efficiency of EPSs: (1) Improved Transformers, (2) Switched-Mode Power Supplies, (3) Low-Power Integrated Circuits, (4) Schottky Diodes and Synchronous Rectification, (5) Low-Loss Transistors, (6) Resonant Switching, and (7) Resonant (''Lossless'') Snubbers.

AHAM and PTI commented during the preliminary analysis that ''[DOE] has not justified the value of decreasing the no-load levels at each [initially considered] CSL'' (AHAM, No. 42 at p. 7; PTI, No. 45 at p. 5). NEEP suggested that DOE should consider whether technology options are applicable across product classes (NEEP, No. 49 at 2).

During its analysis, DOE found that some technology options affect both efficiency and no-load performance and that the individual contributions from these options cannot be separated from each other in a cost analysis. Given this trend, DOE generated a ''matched pairs'' approach for creating the EPS CSLs where select test units were used in characterizing the relationship of average active-mode efficiency and no-load power dissipation. In the matched pairs approach, EPS energy consumption improves either through higher active mode efficiency, lower no-load mode power consumption, or both. If DOE allowed one metric to decrease in stringency between CSLs, then the cost-efficiency results might have shown cost reductions at higher CSLs and skew the true costs associated with increasing the efficiency of EPSs. To avoid this result, DOE is using an approach that increases the stringency of both metrics for each CSL considered in today's NOPR.

Regarding NEEP's suggestion, DOE notes that in developing the engineering analysis, DOE considered all technology options when developing CSLs for all four EPS representative units. DOE considered the same efficiency improvements during its analysis for non-Class A EPSs as it did for Class A EPSs. Where representative units were not explicitly analyzed (i.e. product classes C, D, and E), DOE extended its analysis from a directly analyzed class. As a result, all design options that could apply to these products were implicitly considered because the proposed efficiency levels of the analyzed product class will be scaled to other product classes, an approach supported by interested parties. The equations were structured based on the relationship of the other Class A product classes to the representative product class such that the technology options not implemented by the other classes were accounted for in the proposed efficiency equations. For example, AC–AC EPSs (product classes A2 and A4 in the preliminary analysis) tend to have higher no load power dissipation because they do not use switched-mode methods (see Chapter 3 of the TSD for a full technical description). Therefore, DOE used higher no load power metrics when generating CSLs for these product classes than the CSLs from the representative product class A1. DOE will continue to examine all technology options and apply them wherever possible across all product classes as part of the NOPR analysis.

c. High-Power EPSs

In the non-Class A determination analysis TSD, DOE examined the specific design options of high-power EPSs as they relate to ham radios, the sole consumer application for these EPSs. DOE found that high-power EPSs are unique because both linear and switched-mode versions are available as cost-effective options, but the linear EPSs are more expensive and inherently limited in their achievable efficiency despite sharing some of the same possible efficiency improvements as EPSs in other product classes. Interested parties have expressed concern that setting an efficiency standard higher than a linear EPS can achieve would reduce the utility of these devices because ham radios are sensitive to the electromagnetic interference (EMI) generated by switched-mode EPSs.

However, DOE believes there is no reduction in utility because EPSs used in telecommunication applications are required to meet the EMI regulations of the Federal Communications Commission (47 CFR 15, subpart B) regardless of the underlying technology. DOE used this assumption when constructing its engineering analysis for the NOPR but seeks comment on possible issues with EMI and/or radio frequency interference associated with switch-mode power supplies (SMPS) used with amateur radios, including design options for reducing or eliminating interference.

d. Power Factor

Power factor is a relative measure of transmission losses between the power plant and a consumer product. DOE examined the issue of power factor in section 3.6 of the framework document for the BCEPS rulemaking and noted that certain ENERGY STAR specifications limit power factor. DOE also noted in that same section the role of power factor in higher-power EPSs—namely, that at higher powers, problems associated with power factor (e.g. power dissipation in the wiring) become more pronounced.

PTI commented that DOE should preempt other jurisdictions from regulating power factor by addressing power factor as a metric, but not to specify a limit in the energy-efficiency standard. (PTI, No. 45 at p. 12) PTI stated that regulating power factor will add cost to the product because of the need for additional power factor correction circuitry. It also explained that losses due to power factor are a consequence of the power cables used by the local utility, which are beyond the control of the manufacturer. (PTI, No. 45 at pp. 10–11)

DOE notes that regulating power factor includes substantial challenges, such as quantifying transmission losses that depend on the length of the transmission wires, which differ for each residential consumer. Further, DOE has not yet conclusively analyzed the benefits and burdens from regulating power factor. While DOE plans to continue analyzing power factor and the merits of its inclusion as part of a future rulemaking, it is DOE's view that the above factors weigh in favor of not setting a power factor-based standard at this time.

e. Battery Charger Modes of Operation and Performance Parameters

For the preliminary analysis, DOE found that there are five modes of operation in which a battery charger can operate at any given time. These modes of operation are: Active (or charge) mode, maintenance mode, no-battery (or standby) mode, off mode, and unplugged mode. These five modes are briefly described below: [25]

Active (or charge) mode: During active mode, a battery charger is charging a depleted battery, equalizing its cells, or performing functions necessary for bringing the battery to the fully charged state.

Maintenance mode: In maintenance mode, the battery is plugged into the charger, has reached full charge, and the charger is performing functions intended to keep the battery fully charged while protecting it from overcharge.

No-Battery (or standby) mode: In no-battery mode, the battery is not connected to the charger but the battery charger itself is still plugged into mains.

Off mode: In off mode, the charger remains connected to mains power but the battery is removed and all manual on-off switches are turned off.

Unplugged mode: In unplugged mode, the battery charger is disconnected from mains and not consuming any electrical power.

For each battery charger mode of operation, DOE's battery charger test procedure has a corresponding test that is performed that outputs a metric for energy consumption in that mode. The tests to obtain these metrics are described in greater detail in DOE's battery charger test procedure. (76 FR 31750) The following items are pertinent performance parameters from those tests.

24-Hour Energy: This quantity is defined as the power consumption integrated with respect to time of a full metered charge test that starts with a fully depleted battery. In other words, this is the energy consumed to fully charge and maintain at full charge a depleted battery over a period that lasts 24 hours or the length of time needed to charge the tested battery plus 5 hours, whichever is longer.

Maintenance Mode Power: This is a measurement of the average power consumed while a battery charger is known to be in maintenance mode.

No-Battery (or standby) Mode Power: This is a measurement of the average power consumed while a battery charger is in no-battery or standby mode (only if applicable).

Off-Mode Power: This is a measurement of the average power consumed while an on-off switch-equipped battery charger is in off mode (i.e. with the on-off switch set to the ''off'' position).

Unplugged Mode Power: This quantity is always 0.

Additional discussion on how these parameters are derived and subsequently combined with assumptions about usage in each mode of operation to obtain a value for the UEC is discussed below in section IV.C.2.b.

f. Battery Charger Technology Options

Since most consumer battery chargers contain an AC to DC power conversion stage, similar to that found in an EPS, all of the technology options discussed in section IV.A.4.b also apply to battery chargers. The technology options used to decrease EPS no-load power will impact battery charger energy consumption in no-battery and maintenance modes (and off mode, if applicable), while those options used to increase EPS conversion efficiency will impact energy consumption in active and maintenance modes.

Technology options that DOE considered for battery chargers in the preliminary analysis and again for the NOPR include: Improved transformer cores, termination, elimination/limitation of maintenance mode current, elimination of no-battery mode current, switched-mode power supplies, low-power integrated circuits, Schottky diodes and synchronous rectification, phase control to limit input power. An in-depth discussion of these technology options can be found in TSD chapter 3.

B. Screening Analysis

DOE uses the following four screening criteria to determine which design options are suitable for further consideration in a standards rulemaking:

1. *Technological feasibility.* DOE considers technologies incorporated in commercial products or in working prototypes to be technologically feasible.

2. *Practicability to manufacture, install, and service.* If mass production and reliable installation and servicing of a technology in commercial products could be achieved on the scale necessary to serve the relevant market at the time the standard comes into effect, then DOE considers that technology practicable to manufacture, install, and service.

3. *Adverse impacts on product utility or product availability.* If DOE determines a technology would have significant adverse impact on the utility of the product to significant subgroups of consumers, or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not consider this technology further.

4. *Adverse impacts on health or safety.* If DOE determines that a technology will have significant adverse impacts on health or safety, it will not consider this technology further.

See 10 CFR part 430, subpart C, appendix A, (4)(a)(4) and (5)(b).

[25] Active mode, maintenance mode, standby mode, and off mode are all explicitly defined by DOE in Appendix Y to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Battery Chargers.

For EPSs, DOE did not screen out any technology options after considering the four criteria. For battery chargers, DOE screened out:

1. Non-inductive chargers for use in wet environments because of adverse impacts on safety;
2. Capacitive reactance because of adverse impacts on safety; and
3. Lowering charging current or increasing battery voltage because of adverse impacts on product utility to consumers.

DOE received no comments in response to its preliminary screening analysis. Therefore, DOE is using the same screening analysis for the NOPR.

For additional details, please see chapter 4 of the TSD.

C. Engineering Analysis

In the engineering analysis (detailed in chapter 5 of the TSD), DOE presents a relationship between the manufacturer selling price (MSP) and increases in battery charger and EPS efficiency. The efficiency values range from that of an inefficient battery charger or EPS sold today (i.e., the baseline) to the maximum technologically feasible efficiency level. For each efficiency level examined, DOE determines the MSP; this relationship is referred to as a cost-efficiency curve.

DOE structured its engineering analysis around two methodologies: (1) Test and teardowns, which involves testing products for efficiency and determining cost from a detailed bill of materials derived from tear-downs and (2) the efficiency-level approach, where the cost of achieving increases in energy efficiency at discrete levels of efficiency are estimated using information gathered in manufacturer interviews that was supplemented and verified through technology reviews and subject matter experts (SMEs). When analyzing the cost of each CSL—whether based on existing or theoretical designs—DOE differentiates the cost of the battery charger or EPS from the cost of the associated end-use product.

1. Engineering Analysis for External Power Supplies

a. Representative Product Classes and Representative Units

DOE is applying the same methodology in the NOPR as it used in the preliminary analysis to identify representative product classes and representative units. In the preliminary analysis, DOE selected product class A1 (AC to DC conversion, basic- voltage EPSs) for further analysis as the representative product class because it constituted the majority of EPS shipments and national energy consumption related to EPSs. Within product class A1, DOE focused on four representative units with output power levels at 2.5 watts, 18 watts, 60 watts, and 120 watts because most consumer applications use EPSs with these, or similar, nameplate output power ratings. In the NOPR, DOE is choosing to focus on representative product class B (AC to DC conversion, basic-voltage EPSs), which contains certain product classes from the preliminary analysis—most Class A EPSs from product class A1, most medical EPSs from product class M1, and some MADB EPSs from product class B1 (which are EPSs that can directly power an application). The NOPR analysis also focuses on the same four representative units as the preliminary analysis with output powers at 2.5 watts, 18 watts, 60 watts, and 120 watts in product class B and scales those results to product classes C, D, and E as suggested by interested parties.

Interested parties supported DOE's approach in creating and analyzing representative product classes and representative units in the preliminary analysis. The California IOUs agreed with using product class A1 as the representative product class and scaling to other product classes because of the inherent similarities of the A1 devices to those in the other product classes (California IOUs, No. 43 at p. 8). Although no specific data were provided, the California IOUs also commented in support of the four representative units within the product class noting that their own research [26] into the power supply market corroborates DOE's selections (California IOUs, No. 43 at p. 8). DOE did not receive comments disputing its selections for the four representative units.

DOE is proposing to continue using the same representative product class and representative unit methodology, and will scale results for the other EPS product classes. As noted previously, DOE has incorporated EPSs from product class A1 into product class B. Within product class B (preliminary analysis product class A1) DOE will focus on the four representative units with output powers at 2.5 watts, 18 watts, 60 watts, and 120 watts because products with these ratings constitute a significant portion of shipments and energy consumption. Interested parties also supported this approach.

b. EPS Candidate Standard Levels (CSLs)

DOE is applying the same methodology to establish CSLs in the NOPR as it used in the preliminary analysis. DOE created CSLs as pairs of EPS efficiency metrics for each representative unit with increasingly stringent standards having higher-numbered CSLs. The CSLs were generally based on (1) voluntary (e.g. ENERGY STAR) specifications or mandatory (i.e. those established by EISA 2007) standards that either require or encourage manufacturers to develop products at particular efficiency levels; (2) the most efficient products available in the market; and (3) the maximum technologically feasible (''max tech'') level. These CSLs are summarized for each representative unit in Table IV–4. In section IV.C.1.e, DOE discusses how it developed equations to apply the CSLs from the representative units to all EPSs.

TABLE IV–4—SUMMARY OF EPS CSLS FOR PRODUCT CLASSES B, C, D, AND E

CSL	Reference	Basis
0	EISA 2007	EISA 2007 equations for efficiency and no-load power.
1	ENERGY STAR 2.0	ENERGY STAR 2.0 equations for efficiency and no-load power.
2	Intermediate	Interpolation between test data points.
3	Best in Market	Most efficient test data points.
4	Max Tech	Maximum technologically feasible efficiency.

[26] *http://www.energy.ca.gov/appliances/archive/2004rulemaking/documents/case_studies/CASE_Power_Supplies.pdf.*

DOE evaluated EPSs using the two EPS efficiency metrics, no-load power consumption and active-mode average efficiency, which it grouped into ''matched pairs.'' Under the matched pairs approach, each CSL would increase in stringency in at least one of the metrics and no metric would ever be lowered in moving to a higher CSL. DOE's goal in using this approach was to ensure that when it associated costs with the CSLs, that the costs would reflect the complete costs of increased efficiency. If DOE followed an approach that permitted a decrease in stringency for a given metric, the result might be a projected reduction in EPS cost, which would mask the full cost of increasing EPS efficiency.

DOE received considerable support from interested parties on its matched pairs approach for EPS CSLs. However, interested parties, including the California IOUs, also cautioned DOE to avoid setting levels for no-load power that were too stringent when compared to active-mode efficiency improvements. (California IOUs, No. 43 at p. 8). The California IOUs added that ''PG&E research suggests that improvements in active mode yield much higher energy savings than small, incremental improvements in no-load mode.'' Id. PG&E added that DOE should verify that the no-load levels for the EPS CSLs are not too stringent, which could lead to higher costs since the majority of the projected savings for EPSs would likely come from improving active-mode efficiency (PG&E, Pub. Mtg. Tr., No. 57 at pp. 198–199).

DOE received two additional comments regarding its CSLs. The California IOUs supported DOE's CSL selections, particularly those that were developed based on test data. (California IOUs, No. 43 at p. 8). Additionally, AHAM stated that DOE should ''consider whether the CSLs also apply to units that are less than 2.5W,'' in particular 2.4W and 1.2W EPSs because they believe that ''the CSL for this class does not apply to these smaller wattage products'' (AHAM, No. 42 at p. 13).

DOE considered interested party comments when revising the CSLs for the NOPR. DOE's approach maintains the same efficiency levels for all CSLs but alters the max-tech efficiency level based on new data gleaned from manufacturer interviews, which indicated that manufacturers could achieve higher max-tech levels than were previously considered during the preliminary analysis. No load requirements were carefully considered consistent with commenter suggestions to not aggressively increase these levels.

Further, DOE has tentatively decided to maintain its best-in-market CSL based on test data and also considered whether the CSLs for the 2.5W EPS should apply to lower-power EPSs. DOE continues to believe that the CSLs apply to these lower power devices because the scaling equations developed by DOE incorporate the test results and data of EPSs with nameplate output power ratings less than 2.5W. For both metrics and at each CSL, DOE has developed standards equations that are functions of nameplate output power. To accommodate the design trend of decreasing efficiency with decreasing output power, the 2.5W CSLs are used as lower power reference points for the standard equations. All of the direct operation CSLs were created using a combination of existing standards and were corroborated with test data. In cases where DOE tested EPSs with nameplate output powers less than 2.5 watts, it scaled the results to the representative unit (2.5 W) and adjusted the efficiency accordingly. Hence, the 2.5W CSLs are supported by data from EPSs with output powers equal to 2.5 watts and scaled EPSs with output power ranges below 2.5 watts. DOE used this methodology in generating the CSLs for all of the other direct operation representative units where the CSLs were not only based on units tested at the nominal output power rating but also on scaled results of EPSs with nameplate output powers slightly above and slightly below the representative unit value. For additional detail regarding DOE's scaling methodology see chapter 5 of the TSD.

DOE maintained the same CSLs for multiple-voltage EPSs in product class X as it proposed in the preliminary analysis because it received no comments and has no new information that would otherwise merit a change in the CSLs for this product class. The CSLs are shown in Table IV–5.

TABLE IV–5—SUMMARY OF EPS CSLS FOR PRODUCT CLASS X

CSL	Reference	Basis
0	Market Bottom	Test data of the least efficient unit in the market.
1	Mid Market	Test data of the typical unit in the market.
2	Best-in-Market	Manufacturer's data.
3	Max Tech	Maximum technologically feasible efficiency.

DOE structured the CSLs for high-power EPSs based on products available in the market and by scaling CSLs for 120-watt EPSs. The two least efficient CSLs are based on units DOE tested for the non-Class A EPS determination analysis. CSL 0 corresponds to test results from a linear EPS for amateur radio equipment while CSL 1 corresponds to test results from a switched-mode EPS for the same application. During interviews for the determination analysis, high-power EPS manufacturers indicated that CSL 2 was what they believed to be the max-tech efficiency for high-power EPSs. As outlined in section III.B.2.a, DOE believes that the efficiencies of the 120W EPSs indicate a potential for 345W EPSs to achieve higher efficiencies than CSL 2 since achievable efficiency tends to remain the same for EPSs with a nameplate output power above 49 watts. DOE characterized these higher efficiencies by modeling a 360W EPS composed of three 120W EPSs connected in parallel. This theoretical EPS would have the same average efficiency as a 120W EPS, scaled for nameplate output voltage, and three times the no-load power consumption. DOE developed CSL 3 and CSL 4 for the 345W representative EPSs based on the efficiency of the theoretical 360W EPS. DOE received no comments concerning the CSLs for high-power EPSs during the preliminary analysis (CSL 0, CSL 1 and CSL 2). DOE seeks comment on its proposed methodology for establishing higher-efficiency CSLs (CSL 3 and CSL 4). The CSLs for product class H are listed in Table IV–6.

TABLE IV–6—SUMMARY OF EPS CSLS FOR PRODUCT CLASS H

CSL	Reference	Basis
0	Line Frequency	Test data of a low-efficiency unit in the market.
1	Switched-Mode Low Level	Test data of a high-efficiency unit in the market.
2	Switched-Mode High Level	Manufacturers' theoretical maximum efficiency.
3	Scaled Best-in-Market	Scaled from 120W EPS CSL 3.
4	Scaled Max Tech	Scaled from 120W EPS CSL 4.

c. EPS Engineering Analysis Methodology

In the preliminary analysis, DOE presented two sets of cost-efficiency curves: One based on manufacturer data that showed an increasing trend between cost and efficiency and a second set based on test and teardown data that, while inconclusive, generally showed a decreasing relationship between cost and efficiency. DOE sought interested party comment on this discrepancy.

Commenters had mixed opinions on which results DOE should use as the basis for its analysis. AHAM commented that ''based on what was presented that the Department should use the manufacturer's data'' rather than the test and teardown data that DOE developed stating that ''there is no incentive for manufacturers to not give out all necessary information to the Department''. (AHAM, No. 42 at p. 13) However, IOUs encouraged DOE to continue to pursue teardowns because the test and teardown results in the preliminary analysis, in their view, may be as accurate as manufacturer data since ''costs are rapidly declining for highly efficient power supplies.'' (California IOUs, No. 43 at p. 9). NEEP stated that DOE should ''corroborate the cost-efficiency curve data provided to them by manufacturers.'' In other words, DOE should re-evaluate the manufacturer's results and consider consulting independent sources to establish a more direct relationship between efficiency and cost. (NEEP, No. 49 at p. 4). DOE considered these opinions and sought additional information.

In preparing the NOPR analysis, DOE conducted an additional round of manufacturer interviews to address the differences between the two cost-efficiency curves in the preliminary analysis. Based on the interviews, DOE believes that the discrepancy between the preliminary analysis curves was due to an ongoing shift in the market that was not reflected in the data. Specifically, the manufacturers stated during these interviews that the EPS market has a trend of increasing efficiency and decreasing cost with each design cycle and the DOE-tested units may have been from different design cycles.[27] By contrast, the manufacturers' data on which DOE had initially relied reflected the cost-efficiency relationship during a single design cycle. In general, manufacturers agreed that, in their current design cycle, EPSs are designed to be more efficient than the ENERGY STAR level. Thus, DOE's revised cost-efficiency curves reflect this improved understanding across all the representative units using updated data obtained from interviews with EPS manufacturers and component suppliers.

In the preliminary analysis, DOE evaluated switched-mode power supplies (i.e. power supplies that use controlled switching of a power source to regulate the flow of current to a load), but not linear power supplies. Linear power supplies are power supplies that use a transformer and a linear regulator to provide power to a load. These devices are typically less cost effective as a method to improve energy efficiency and inherently limited in their achievable efficiencies—these limitations stem from the conversion stage delivering current at a higher voltage than needed by the consumer product and dropping the excess voltage across the regulator to achieve the lower regulated output voltage. The power lost in the regulator is the product of the voltage drop and the load current and is dissipated as heat. Switched-mode power supplies do not have the same limitations with respect to the level of efficiency they can achieve because the design relies on transferring power through the controlled modulation of energy stored in the magnetic and electric fields of passive components. As a result, there are fewer resistive losses in the conversion stage and the voltage is regulated using controlled switching instead of intentionally dissipating excess voltage in the form of heat, Cobra Electronics noted this omission. (Cobra, No. 51 at p. 3) DOE has since re-evaluated the analysis and found that linear power supplies are a cost-effective option for 2.5 W EPSs at the lower stringency CSLs, but not in meeting other CSLs or in satisfying CSLs for other representative units. As a result, the NOPR cost-efficiency curves for the 2.5W representative unit include linear supplies as part of the analysis.

Today's proposed rule is based on a slightly revised version of the initial methodology DOE considered when aggregating manufacturer results for the 2.5W and 18W representative units. In the preliminary analysis, DOE used a 3D-aggregation method[28] based on cost, efficiency, and no-load power to generate cost-efficiency curves for all representative units. The same 3D-aggregation methodology was applied to the NOPR analysis with the exception of the 2.5W and 18W representative units, for which DOE used a 2D aggregation approach.[29] DOE used a 2D aggregation method because that method more accurately captures the cost-efficiency relationship for these EPSs. Generally, DOE believes that 3D aggregation typically yields the best curve fit for the dataset, so long as there are sufficient data. However, for the 2.5W and 18W EPSs, DOE had less data for which it could generate curve fits. DOE initially ran a 3D regression for the 2.5W and 18W representative units, but found that variations in the data for no-load power caused the correlation of the resulting curve to be low. Upon further inspection, DOE believes that the 2D curve fit more accurately reflects the less-robust underlying dataset for these two EPSs because the costs represent incremental improvements to meet specific CSLs and, thus, the large variations in the no-load power data provided by manufacturers do not degrade the correlation of the curve fit. Therefore, DOE switched to a 2D aggregation that described efficiency and cost, which generated a curve with higher correlation and more appropriate

[27] Original design dates are difficult to determine because the date of release is not often publicized with EPS product data.

[28] DOE's 3D-aggregation method is an approach to developing an equation that describes how MSP for an EPS changes with respect to both average efficiency and no-load power. That is, MSP is a function of both metrics simultaneously.

[29] DOE's 2D-aggregation method is an approach to developing an equation that describes how MSP for an EPS changes with respect to average efficiency only.

results for these representative units. For the remaining EPSs, DOE continued to apply the 3D-aggregation method because it generated a satisfactory curve fit. For additional details, please see chapter 5 of the TSD.

d. EPS Engineering Results

DOE characterized the cost-efficiency relationship of the four representative units in product class B as shown in Table IV–7, Table IV–8, Table IV–9, and Table IV–10. During interviews, manufacturers indicated that their switched-mode EPSs currently meet CSL1, the ENERGY STAR 2.0 specification. This factor is reflected in the analysis by setting the incremental MSP for the 18W, 60W, and 120W EPSs at $0 at CSL 1, which means that there is no incremental cost above the baseline to achieve CSL 1. Costs for the 2.5W EPS, however, are estimated at $0.15 for CSL 1. This result occurs because of DOE's assumption (based on available information) that the lowest cost solution for improving the efficiency of the 2.5W EPS is through the use of linear EPSs, which are manufactured both at the EISA 2007 level as well as at ENERGY STAR 2.0. Specifically, as commenters suggested, DOE examined linear EPSs and found that they might be a cost-effective solution at CSL 0 and CSL 1 for 2.5W EPSs. Thus, $0.15 indicates the incremental cost for a 2.5W EPS to achieve higher efficiency. For all four representative units, the more stringent CSLs, CSL 2, CSL 3, and CSL 4, correspond to switched-mode EPSs designed during the same design cycle, which would cause their costs to increase with increased efficiency.

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Table IV-7 2.5W EPS Engineering Analysis Results

	CSL 0	CSL 1	CSL 2	CSL 3	CSL 4
Efficiency [%]:	58.3	67.9	71.0	73.5	74.8
No-Load Power [W]:	0.500	0.300	0.130	0.100	0.039
CSL Description:	EISA	ENERGY STAR 2.0	Intermediate	Best-in-Market	Max Tech
Incremental MSP[$]:	0.00	0.15	0.33	0.45	0.52

Table IV-8 18W EPS Engineering Analysis Results

	CSL 0	CSL 1	CSL 2	CSL 3	CSL 4
Efficiency [%]:	76.0	80.3	83.0	85.4	91.1
No-Load Power [W]:	0.500	0.300	0.2	0.1	0.039
CSL Description:	EISA	ENERGY STAR 2.0	Intermediate	Best-in-Market	Max Tech
Incremental MSP[$]:	0.00	0.00	0.17	0.64	2.89

Table IV-9 60W EPS Engineering Analysis Results

	CSL 0	CSL 1	CSL 2	CSL 3	CSL 4
Efficiency [%]:	85.0	87.0	87.0	88.0	92.2
No-Load Power [W]:	0.5	0.5	0.2	0.073	0.05
CSL Description:	EISA	ENERGY STAR 2.0	Intermediate	Best-in-Market	Max Tech
Incremental MSP[$]:	0.00	0.00	0.82	1.29	2.73

Table IV-10 120W EPS Engineering Analysis Results

	CSL 0	CSL 1	CSL 2	CSL 3	CSL 4
Efficiency [%]:	85.0	87.0	88.0	88.4	93.5
No-Load Power [W]:	0.5	0.5	0.23	0.21	0.089
CSL Description:	EISA	ENERGY STAR 2.0	Intermediate	Best-in-Market	Max Tech
Incremental MSP[$]:	0.00	0.00	0.31	0.45	6.41

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Unlike product class B, DOE analyzed a single 203W representative unit for multiple-voltage EPSs. These devices are exclusively used with home video-game consoles, which use one output to power the device and another for standby controls. In Chapter 5 of the preliminary analysis TSD, DOE indicated that, for the NOPR, it was considering using the cost-efficiency relationship for 203W multiple-voltage

EPSs that it developed as part of the non-Class A EPS determination analysis. In the determination analysis, DOE derived costs for CSL 0 and CSL 1 from test and teardown data but costs for CSL 2 and CSL 3 came from manufacturer and component supplier interviews. DOE received no comments on this approach, which was detailed in the preliminary analysis TSD. Hence, DOE is continuing to rely on its determination analysis results to help characterize the cost-efficiency relationship for 203W multiple voltage EPSs, shown in Table IV–11.

Table IV-11 203W EPS Engineering Analysis Results

	CSL 0	CSL 1	CSL 2	CSL 3
Efficiency [%]:	82.4	86.4	86.4	88.5
No-Load Power [W]:	12.3	0.4	0.3	0.3
CSL Description:	Market Baseline	Mid-Market	Best-in-Market	Max Tech
Incremental MSP[$]:	0.00	2.45	2.66	7.71

Similar to the analysis of multiple-voltage EPSs, DOE analyzed one 345W representative unit for high-power EPSs. In Chapter 5 of the preliminary analysis TSD, DOE indicated that it was considering applying the cost-efficiency relationship for 345W high-power single-voltage EPSs that it developed as part of the non-Class A EPS determination analysis to high-power EPSs. In the determination analysis, DOE derived costs for CSL 0 and CSL 1 from test and teardown data, whereas costs for CSL 2 and CSL 3 came from manufacturer and component supplier interviews. DOE did not receive comments on this aspect of its approach in the preliminary analysis TSD. Hence, DOE used the results from the determination analysis to characterize the costs of the less-efficient CSLs for 345W high-power EPSs in today's NOPR (CSL 0 and CSL 1).

However, as noted previously in section IV.C.1.b, DOE also believes that a 345W EPS could achieve higher efficiencies based on its theoretical model of a 360W EPS that exhibits the properties of three 120W EPSs connected in parallel. These higher output devices are typically used with amateur radio equipment, which often transmit at power levels between 100 and 200 watts while simultaneously providing power to other components. DOE developed its costs for the higher-efficiency CSLs (CSL 2, CSL 3, and CSL 4) based on 120W EPS analysis. The complete cost-efficiency relationship for the 345W EPS is shown in Table IV–12.

Table IV-12 345W EPS Engineering Analysis Results

	CSL 0	CSL 1	CSL 2	CSL 3	CSL 4
Efficiency [%]:	62.4	81.3	84.6	87.5	92.0
No-Load Power [W]:	15.43	6.01	0.5	0.5	0.266
CSL Description:	Market Baseline	Low Market	Mid-Market	Scaled Best-in-Market	Scaled Max Tech
Absolute MSP[$]:	132.68	104.52	104.52	107.30	143.92

e. EPS Equation Scaling

During the preliminary analysis phase, DOE presented an approach to derive the average efficiency and no-load efficiency requirements for each CSL over the full range of output power for Class B EPSs. Mathematical equations define each CSL as a pair of relationships—(1) average active-mode efficiency to nameplate output power and (2) no-load mode power consumption to nameplate output power. These equations allow DOE to describe a CSL for any nameplate output power and are the basis of its proposed standards. A complete description of the equations can be found in chapter 5 of the TSD.

For the baseline CSL and CSL1, DOE relied on equations from EISA 2007 and ENERGY STAR 2.0, respectively, rather than developing new equations. Both equations are defined over ranges of output power, although the divisions between ranges are slightly different. EISA 2007 created divisions by establishing separate efficiency equations at the 1 watt and 51 watt levels—ENERGY STAR 2.0 creates a similar dividing line at 1 watt and 49 watts. See 42 U.S.C. 6295(u)(3)(A) (denoting nameplate output divisions at under 1 watt, 1 watt to not more than 51 watts, and over 51 watts) and ''ENERGY STAR Program Requirements for Single Voltage External Ac-Dc and Ac-Ac Power Supplies'' (denoting nameplate output divisions at less than or equal to 1 watt, 1 watt to not more than 49 watts, and over 49 watts). DOE developed equations for all other CSLs and for consistency and simplicity used the ENERGY STAR 2.0 divisions at 1 watt and 49 watts for all CSLs. These divisions were created in conjunction with the EPS product classes discussed in section IV.A.3.a as part of a complete analysis by the EPA. Given that it is considering adopting those product classes for direct operation EPSs, DOE believes that utilizing the ENERGY STAR output power divisions for its proposed standards is the most appropriate course of action. Consequently, the proposed standards are structured around these divisions rather than those created by the EISA 2007 standard or the CEC standards for EPSs.

DOE derived CSL 2, CSL 3, and CSL 4 by fitting equations to the efficiency values of their respective data points for each representative unit. DOE used an equation of the form $Y = a*\ln(P_{out}) + b * P_{out} + c$, for each of the nameplate output power ranges, where Y indicates the efficiency requirement; P_{out} indicates the nameplate output power; and a, b, and c indicate the specific parameters defined in the respective CSLs. DOE ensured that the equations met three conditions:

(1) The distance to each point was minimized.

(2) The equation did not exceed the tested efficiencies.

(3) DOE further restricted the parameter choice in order to ensure that the CSL curves adhered to a matched pairs approach fully detailed in chapter 5 of the TSD.

Among the CSLs for product class B, DOE only revised the efficiencies of the max-tech data points at CSL 4. Thus, the remaining CSL equations, other than max-tech, remain unchanged from the equations DOE developed for the preliminary analysis. For the NOPR, DOE derived a revised max-tech scaling equation using the new max-tech data points it developed after obtaining additional data during manufacturer interviews following the preliminary analysis.

As in the preliminary analysis, DOE scaled the CSL equations from product class B to product classes with low-voltage and AC–AC EPSs, which comprise product classes C, D, and E. The scaling for these equations was based on ENERGY STAR 2.0, which separates AC–DC conversion and AC–AC conversion into ''basic-voltage'' and ''low-voltage'' categories. ENERGY STAR 2.0 sets less stringent efficiency levels for low-voltage EPSs because they cannot typically achieve the same efficiencies as basic-voltage EPSs due to inherent design limitations. Similarly, ENERGY STAR 2.0 sets less stringent no-load standards for AC–AC EPSs because they do not use the overhead circuitry found in AC–DC EPSs to limit no-load power dissipation. The power consumed by the additional AC–AC EPS circuitry would actually increase their no-load power metric. DOE used this approach to develop CSLs other than the baseline CSL 0 for product classes C, D, and E. Because the baseline is the EISA 2007 standard that applies to all Class A EPSs, which comprise most of product classes B, C, D, and E, CSL 0 is the same for all product classes.

As described in the preliminary analysis and continued in today's proposal, DOE created less stringent CSLs for product classes C, D, and E. For CSL 1, the equations come directly from the ENERGY STAR 2.0 low-voltage equation. The low-voltage curves for CSL 2, CSL 3, and CSL 4 were created by using their respective CSL 2, CSL 3, and CSL 4 basic-voltage efficiency curves, and altering all equation parameters by the difference in the coefficients between the CSL 1 basic-voltage and low-voltage equations. This approach had the effect of shifting the CSL 2, CSL 3, and CSL 4 low-voltage curves downward from their corresponding basic-voltage CSL 2, CSL 3, and CSL 4 curves, by a similar amount as the shift between the CSL basic-voltage and low-voltage curves.

In the executive summary of the preliminary analysis TSD, DOE asked for comment regarding the various scaling relationships it developed to analyze EPS representative units and generate CSLs for the scaled product classes. The California IOUs commented that they agreed ''with [scaling EPS] CSLs on the basis of nameplate output power'' but added that the standard equation should be based on power alone, not on voltage or cord length because this approach would allow DOE to create a potential standard more transparently than one based on voltage or cord length. In their view, an approach based on either or both of these factors would unnecessarily complicate the analysis without yielding an appreciable benefit with respect to determining an EPS's achievable efficiency. (California IOUs, No. 43 at p. 8).

DOE is proposing to apply the output power scaling method detailed in chapter 5 of the TSD to set the standards for the scaled product classes.

During the preliminary analysis, DOE analyzed the impacts of setting a discrete standard for product class X (multiple-voltage EPSs) as there was only one existing product on the market at that time. Since then, DOE has re-evaluated its data and now believes that the ENERGY STAR 2.0 low-voltage standard equation for AC–DC conversion is a preferable approach to setting standards for multiple-voltage EPSs because lower power EPSs tend to be less efficient. Under this approach, DOE would take into account that trend and any low-power multiple-voltage EPSs that appear on the market would not be relegated to a single efficiency level that was established based on the performance of a 203W unit. As detailed in chapter 5 of the TSD, the ENERGY STAR 2.0 low-voltage equation matches the CSL DOE is proposing for the standard at the representative unit's output power of 203 watts, but also sets less stringent efficiency standards for lower power EPSs. Therefore, the proposed equation accounts for future products requiring multiple-voltage EPSs by setting a continuous standard versus output power while also supporting DOE's analysis of the 203W representative unit in product class X. DOE applied the same constraints when fitting the equation to the test data as it did for product classes B, C, D, and E. DOE seeks comment on this proposed approach in setting a standard for multiple-voltage EPSs.

For product class H (high-power EPSs), DOE proposes to set a discrete standard for all EPSs greater than 250 watts. DOE believes this is appropriate for two main reasons: (1) DOE is aware of only one application for high-power EPSs (i.e., amateur radios) and (2) this approach is consistent with the standard for product class B, which is a discrete level for all EPSs with nameplate output powers greater than 49 watts. In light of these facts, setting a single efficiency level as the standard for all EPSs with output powers greater than 250 watts (i.e., high-power EPSs) appears to be a reasonable approach to ensure a minimal level of energy efficiency while minimizing the overall level of burden on manufacturers. DOE seeks comment on this approach.

2. Engineering Analysis for Battery Chargers

When developing the engineering analysis for battery chargers, DOE selected representative units for each product class. For each representative unit, DOE tested a number of different products. After examining the test results, DOE selected CSLs that set discrete levels of improved battery charger performance in terms of energy consumption. Subsequently, for each CSL, DOE used either teardown data or information gained from manufacturer interviews to generate costs corresponding to each CSL for each representative unit. Finally, for each product class, DOE developed scaling relationships using additional test results and generated UEC equations based on battery energy.

a. Representative Units

For each product class, DOE selected a representative unit upon which it conducted its engineering analysis and developed a cost-efficiency curve. The representative unit is meant to be an idealized battery charger typical of those used with high-volume applications in its product class. Because results from the analysis of these representative units would later be extended to additional battery chargers, DOE selected high-volume and/or high-energy-

consumption applications that use batteries that are typically found across battery chargers in the given product class. The analysis of these battery chargers is pertinent to all the applications in the product class under the assumption that all battery chargers with the same battery voltage and energy provide similar utility to the user, regardless of the actual end-use product with which they work. The table below shows the representative units for each product class that DOE analyzed.

Table IV-13 The Battery Charger Representative Units for each Product Class

Product Class #	Input / Output Type	Battery Energy (Wh)	Special Characteristic or Battery Voltage	Rep. Unit Battery Voltage (V)	Rep. Unit Battery Energy (Wh)
1	AC In, DC Out	< 100	Inductive Connection	3.6	1.5
2			< 4 V	3.6	3
3			4–10 V	7.2	10
4			> 10 V	12	20
5		100–3000	< 20 V	12	800
6			≥ 20 V	24	400
7		> 3000	-	48	3,750
8	DC In, DC Out	-	< 9 V Input	3.6	2
9		-	≥ 9 V Input	5	3.6
10	AC In, AC Out	-	-	12	70

Additional details on the battery charger representative units can be found in chapter 5 of the TSD.

b. Battery Charger Efficiency Metrics

In the preliminary analysis, DOE considered using a single metric (i.e., UEC) to illustrate the improved performance of battery chargers. DOE designed the calculation of UEC to represent an annualized amount of the non-useful energy consumed by a battery charger in all modes of operation. Non-useful energy is the total amount of energy consumed by a battery charger that is not transferred and stored in a battery as a result of charging (i.e., losses). In order to calculate UEC, DOE must have the performance data, which comes directly from its battery charger test procedure (see section IV.A.4.e.). DOE must also make assumptions about the amount of time spent in each mode of operation. The collective assumption about the amount of time spent in each mode of operation is referred to as a usage profile and is addressed in section IV.E and further detail in TSD chapter 7.

The possible use of a UEC metric generated numerous comments. NEEP and PG&E stated that they believed UEC to be an inappropriate metric because of the uncertainties around the usage profiles. (NEEP, No. 51 at p. 3; PG&E, et al., No. 49 at p. 1). NEEP suggested that DOE should regulate 24-hour energy and standby mode power individually rather than use UEC. (NEEP, No. 51 at p. 4). For product classes 1 through 9, PG&E proposed that DOE should have separate standards for 24-hour charge and maintenance energy and no-battery mode power, while for product class 10, DOE should regulate only maintenance mode power. (PG&E, et al., No. 49 at p. 2). PG&E also suggested another alternative in which DOE could use UEC, but that alternative involved giving equal weight to each mode of operation. (PG&E, et al., No. 49 at p. 2). While the ENERGY STAR specification for battery chargers (i.e., a nonactive energy ratio) does not consider active (or charge) mode, the California IOUs agreed with DOE's approach to consider active mode as a component of UEC. (California IOUs, No. 43 at p. 1). Details on UEC are included in the next section of today's notice (IV.C.2.c).

DOE recognizes that a wide range of consumers may use the same product in different ways, which may cause some uncertainty about usage profiles. Notwithstanding that possibility, DOE believes that its assumptions are accurate and appropriate gauges of product use because calculated weighted averages of usage profiles based on a distribution of user types were used to represent each product class. These assumptions also rely on a variety of sources including information from manufacturers and utilities. Details on DOE's new usage profile assumptions and how they have changed since the preliminary analysis can be found in section IV.E of today's notice and TSD chapter 7.

DOE also appreciates suggestions to regulate only product class 10 (AC in/AC out) on the basis of maintenance mode power. DOE's proposal follows that suggestion. DOE assumes that UPSs, which comprise all of product class 10 units, are always in maintenance mode and undergo zero charges per year. By following this

approach, the calculated energy per year for these devices is simply an allowance of maintenance mode power over a 365-day year. However, by converting maintenance mode power to a UEC, DOE can ensure consistency across all battery charger classes and avoid any potential confusion.[30]

Finally, DOE believes that by aggregating the performance parameters of battery chargers into one metric and applying a usage profile, it will allow manufacturers more flexibility to improve performance in the modes of operation that will be the most beneficial to their consumers rather than being required to improve the performance in each mode of operation, some of which may not provide any appreciable benefit. For example, a battery charger used with a mobile phone is likely to spend more time per day in no-battery mode than a battery charger used for a house phone, which is likely to spend a significant portion of every day in maintenance mode. Consequently, it would be more beneficial to consumers of mobile phones if manufacturers improved no-battery mode and house phone battery charger manufacturers improved maintenance mode. Therefore, DOE plans to continue to use UEC as the metric for battery chargers.

c. Calculation of Unit Energy Consumption

As discussed in IV.C.2.b, UEC is based on a calculation designed to give the total annual amount of energy lost by a battery charger from the time spent in each mode of operation. For the preliminary analysis, the various performance parameters were combined with the usage profile parameters and used to calculate UEC with the following equation:

$$UEC = 365\left(n(E_{24} - P_m(24 - t_c) - E_{batt}) + (P_m(t_{a\&m} - (t_c n))) + (P_{sb} t_{sb}) + (P_{off} t_{off})\right)$$

Where:

E_{24} = 24 hour energy
E_{batt} = Measured battery energy
P_m = Maintenance mode power
P_{sb} = Standby mode power
P_{off} = Off mode power
t_c = Time to completely charge a fully discharged battery
n = Number of charges per day
$t_{a\&m}$ = Time per day spent in active and maintenance mode
t_{sb} = Time per day spent in standby mode
t_{off} = Time per day spent in off mode [31]

When separated and examined in segments, it becomes evident how this equation gives a value for energy consumed in each mode of operation per day and ultimately, energy consumption per year. These segments are discussed individually below. DOE seeks comment on all of these equations and its proposed approach.

Active (or Charge) Mode Energy per Day

$$n(E_{24} - P_m(24 - t_c) - E_{batt}) = E_{Active\ Mode}\frac{\square}{day}$$

In the first portion of the equation, shown above, DOE combines the assumed number of charges per day, 24-hour energy, maintenance mode power, charge time, and measured battery energy to calculate the active mode energy losses per day. To calculate this value, 24-hour energy (E_{24}) is reduced by the measured battery energy (the useful energy inherently included in a 24-hour energy measurement) and the product of the value of the maintenance mode power multiplied by the quantity of 24 minus charge time. This latter value (24 minus charge time) corresponds to the amount of time spent in maintenance mode, which, when multiplied by maintenance mode power, yields the amount of maintenance mode energy consumed by the tested product. Thus, maintenance mode energy and the value of the energy transferred to the battery during charging are both subtracted from 24-hour energy, leaving a quantity theoretically equivalent to the amount of energy required to fully charge a depleted battery. This number is then multiplied by the assumed number of charges per day (n) resulting in a value for active mode energy per day. Details on DOE's usage profile assumptions can be found in section IV.E of today's notice and TSD chapter 7.

Maintenance Mode Energy per Day

$$(P_m(t_{a\&m} - (t_c n))) = E_{Maintenance\ Mode}\frac{\square}{day}$$

In the second segment of DOE's equation, shown above, maintenance mode power, time spent in active and maintenance mode per day, charge time, and the assumed number of charges per day are combined to obtain maintenance mode energy per day. Time spent in active and maintenance mode is subtracted by the product of the charge time multiplied by the number of charges per day. The resulting quantity is an estimate of time spent in maintenance mode per day, which, when multiplied by the measured value of maintenance mode power, yields the energy consumed per day in maintenance mode.

Standby (or No-Battery) Mode Energy per Day

$$(P_{sb}\, t_{sb}) = E_{Standby\ Mode}\frac{\square}{day}$$

In the third part of DOE's UEC equation, shown above, the measured value of standby mode power is multiplied by the estimated time in

[30] If DOE were to establish an energy conservation standard for UPSs in terms of maintenance mode power, manufacturers of other products could be confused and believe that their product is also subject to a maintenance mode power standard, when in fact, it is a combination of all of their product's performance characteristics.

[31] Those values shown in *italics* are parameters assumed in the usage profile and change for each product class. Further discussion of them and their derivation is found in IV.E. The other values should be determined according to section 5 of appendix Y to subpart B of part 430.

standby mode per day, which results in a value of energy consumed per day in standby mode.

Off-Mode Energy per Day

$$(P_{off}t_{off}) = E_{No_{Battery}Mode}\frac{\square}{day}$$

In the final part of DOE's UEC equation, shown above, the measured value of off-mode power is multiplied by the estimated time in off-mode per day, which results in a value of energy consumed per day in off-mode.

Finally, to obtain UEC, the values found through the above calculations are added together. The resulting sum is equivalent to an estimate of the average amount of energy consumed by a battery charger per day. That value is then multiplied by 365, the number of days in a year, and the end result is a value of energy consumed per year.

Modifications to Equation for Unit Energy Consumption

On April 2, 2010, DOE published its NOPR on active mode test procedures for battery chargers and EPSs. 75 FR 16958. In that notice, DOE proposed shortening the active mode test procedure in scenarios where a technician could determine that a battery charger had entered maintenance mode. 75 FR 16970. However, during its testing of battery chargers, DOE observed complications arising when attempting to determine the charge time for some devices, which, in turn, could affect the accuracy of the UEC calculation. DOE also received comments opposed to the proposed shortened test procedure. DOE ultimately decided that the duration of the charge test must not be shortened and be a minimum of 24 hours. See 76 FR 31750 (final rule establishing amended test procedure for battery chargers and EPSs). The test that DOE adopted is longer if it is known (e.g., because of an indicator light on the battery charger) or it can be determined from manufacturer information that fully charging the associated battery will take longer than 19 hours.[32]

This revision to the test procedure is important because it underscores the potential issues with trying to determine exactly when a battery charger has entered maintenance mode, which creates difficulty in determining charge time. To address this situation, DOE modified its initial UEC equation. The new equation, which was presented to manufacturers during interviews, is mathematically equivalent to the equation presented in the preliminary analysis. When the terms in the preliminary analysis UEC equation are multiplied, those terms containing a factor of charge time cancel each other out and drop out of the equation. What is left can be factored and rewritten as done below. This means that even though the new equation looks different from the equation presented for the preliminary analysis, the value that is obtained is exactly the same and represents the exact same value of unit energy consumption.

$$UEC = 365\left(n(E_{24} - E_{batt}) + (P_m(t_{a\&m} - (24n))) + (P_{sb}t_{sb}) + (P_{off}t_{off})\right)$$

In addition to initially considering a shortened battery charger active mode test procedure, DOE considered capping the measurement of 24-hour energy at the 24-hour mark of the test. However, following this approach could result in inaccuracies because that measurement would exclude the full amount of energy used to charge a battery if the charge time is longer than 24 hours in duration. To account for this possibility, DOE altered this initial approach in the test procedure final rule by requiring the measurement of energy for the entire duration of the charge and maintenance mode test, which includes a minimum of 5 hours in maintenance mode. 76 FR 31750, 31780.

The modifications to the UEC calculation do not alter the value obtained when the charge and maintenance mode test is completed within 24 hours. However, if the test exceeds 24 hours, the energy lost during charging is scaled back to a 24-hour, or per day, cycle by multiplying that energy by the ratio of 24 to the duration of the charge and maintenance mode test. In the equation below, t_{cd}, represents the duration of the charge and maintenance mode test and is a value that the test procedure requires technicians to determine. DOE also modified the equation for the NOPR by inserting a provision to subtract 5 hours of maintenance mode energy from the 24-hour energy measurement. This change was made because the charge and maintenance mode test includes a minimum of 5 hours of maintenance mode time. Consequently, in the second portion of the equation below, DOE would reduce the amount of time subtracted from the assumed time in active and maintenance mode time per day.

In other words, the second portion of the equation, which is an approximation of maintenance mode energy, is reduced by 5 hours. This alteration is needed in those instances when the charge and maintenance mode test exceeds 24 hours, because the duration of the test minus 5 hours is an approximation of charge time. This information, t_{cd}, can then be used to approximate the portion of time that a device is assumed to spend in active and maintenance mode per day ($t_{a\&m}$) is solely dedicated to maintenance mode.[33] The primary equation that manufacturers will use to determine their product's unit energy consumption and whether or not their device complies with DOE's standards is below.

$$UEC = 365\left(n(E_{24} - 5P_m - E_{batt})\frac{24}{t_{cd}} + (P_m(t_{a\&m} - (t_{cd} - 5)n)) + (P_{sb}t_{sb}) + (P_{off}t_{off})\right)$$

[32] The charge mode test must include at least a five-hour period where the unit being tested is known to be in maintenance mode. Thus, if a device takes longer than 19 hours to charge, or is expected to take longer than 19 hours to charge, the entire duration of the charge mode test will exceed 24 hours in total time after the five-hour period of maintenance mode time is added. 76 FR 31750, 31766–67, and 31780.

[33] For a test exceeding 24 hours, the duration of the test less 5 hours is equal to the time it took the battery being tested to become fully charged ($t_{cd} - 5$). That value, multiplied by the assumed number of charges per day, gives an estimate of charge (or active) time per day, which can then be subtracted from DOE's other assumption for $t_{a\&m}$. That difference is an approximation for maintenance mode time per day.

Secondary Calculation of UEC

For some battery chargers, the equation described above is not appropriate and an alternative calculation is necessary. Specifically, in those cases where the charge test duration (as determined according to section 5.2 of appendix Y to subpart B of part 430) minus 5 hours is multiplied by the number of charges per day (n) is greater than the time assumed in active and maintenance mode ($t_{a\&m}$), an alternative equation must be used. A different equation must be used because if the number of charges per day multiplied by the time it takes to charge (charge test duration minus 5 hours—or the charge time per day) is longer than the assumption for the amount of time spent in charge mode and maintenance mode per day, that difference creates an inconsistency between the measurements for the test product and DOE's assumptions. This problem can be corrected by using an alternative equation, which is shown below.

$$UEC = 365\left(n(E_{24} - 5P_m - E_{batt})\frac{24}{[(t]_{cd} - 5)} + (P_{sb}t_{sb}) + (P_{off}t_{off})\right)$$

This alternative equation resolves this inconsistency by prorating the energy used for charging the battery.

d. Battery Charger Candidate Standard Levels (CSLs)

After selecting its representative units for battery chargers, DOE examined the impacts on the cost of improving the efficiency of each of the representative units to evaluate the impact and assess the viability of potential energy efficiency standards. As described in the technology assessment and screening analysis, there are numerous design options available for improving efficiency and each incremental technology improvement increases the battery charger efficiency along a continuum. The engineering analysis develops cost estimates for several CSLs along that continuum.

CSLs are often based on (1) efficiencies available in the market; (2) voluntary specifications or mandatory standards that cause manufacturers to develop products at particular efficiency levels; and (3) the maximum technologically feasible level.[34]

Currently, there are no energy conservation standards for battery chargers. DOE does not believe the ENERGY STAR efficiency level to be widely applicable, primarily because these levels are limited to chargers used for motor-operated applications and contain no provisions to cover active mode energy consumption. Because of this situation, DOE based the CSLs for its battery charger engineering analysis on the efficiencies obtainable through the design options presented previously (see IV.A.4.f). These options are readily seen in various commercially available units. DOE selected commercially available battery chargers at the representative-unit battery voltage and energy levels from the high-volume applications identified in the market survey. DOE then tested these units in accordance with the DOE battery charger test procedure. For each representative unit, DOE then selected CSLs to correspond to the efficiency of battery charger models that were comparable to each other in most respects, but differed significantly in UEC (i.e., efficiency).

In general, for each representative unit, DOE chose the baseline (CSL 0) unit to be the one with the highest calculated unit energy consumption, and the best-in-market (CSL 2) to be the one with the lowest. Where possible, the energy consumption of an intermediate model was selected as the basis for CSL 1 to provide additional resolution to the analysis.

Unlike the previous three CSLs, CSL 3 was not based on an evaluation of the efficiency of battery charger units in the market, since battery chargers with maximum technologically feasible efficiency levels are not commercially available due to their high cost. Where possible, DOE analyzed manufacturer estimates of max-tech costs and efficiencies. In some cases, manufacturers were unable to offer any insight into efficiencies beyond the best currently available in the market. Therefore, DOE projected the efficiency of a max-tech unit by estimating through extrapolation from its analysis of the analyzed CSL 2 unit the impacts of adding any remaining energy efficiency design options.

DOE received a number of comments from interested parties regarding the CSLs developed for the preliminary analysis. The California IOUs suggested that DOE consider CSLs between the best-in-market and max-tech levels. (California IOUs, No. 43 at pp. 3, 5) NEEP made a similar suggestion, stating that DOE should have an additional CSL between the intermediate and max-tech CSLs. (NEEP, No. 51 at p. 4) The California IOUs added that DOE should consider the efficiency levels proposed at a standards-related workshop held in California on October 11, 2010.[35] (California IOUs, No. 43 at p. 2)

In response to these suggestions on the preliminary analysis, DOE considered the levels proposed at the California workshop. At that workshop, California proposed using separate metrics for 24-hour energy, maintenance mode power, and standby mode power. Subsequently, California modified its approach to battery charger standards and combined the requirements for maintenance mode power and standby mode power into one metric. Using its usage profiles to translate these standards into a value of UEC, DOE compared its CSLs with the levels adopted by California. DOE found that, in most cases, when California's proposed standard was calculated into a value of UEC (using DOE's usage profile assumptions), it generally corresponded closely with one of DOE's CSLs for each product class. Therefore, in most instances, little valuable resolution could be added to DOE's cost-efficiency curves.

Although this was the case for most product classes, it was not the case for all of them. For product class 2, DOE adopted the suggestion from the California IOUs and added a level between CSL 1 and CSL 2 because the magnitude of the gap between UEC values was large enough to permit an additional CSL that could provide more cost effective savings. Please see TSD chapter 5 for product class 2 test results that illustrate this gap.

Table IV–14 below shows which CSL aligns most closely with the California proposal for each product class.

[34] The ''max-tech'' level represents the most efficient design that is commercialized or has been demonstrated in a prototype with materials or technologies available today. ''Max-tech'' is not constrained by economic justification, and typically is the most expensive design option considered in the engineering analysis.

[35] PG&E, Analysis of Standards Options for Battery Charger Systems, October 1, 2010 (*http://www.energy.ca.gov/appliances/battery_chargers/documents/2010-10-11_workshop/2010-10-11_Battery_Charger_Title_20_CASE_Report_v2-2-2.pdf).*

TABLE IV–14—CSLS EQUIVALENT TO CALIFORNIA PROPOSED STANDARDS

Product class	CSL equivalent to CEC standard
1 (Low-Energy, Inductive)	CSL 0
2 (Low-Energy, Low-Voltage)	CSL 2
3 (Low-Energy, Medium-Voltage)	CSL 2
4 (Low-Energy, High-Voltage)	CSL 2
5 (Medium-Energy, Low-Voltage)	CSL 3
6 (Medium-Energy, High-Voltage)	CSL 3
7 (High-Energy)	CSL 1
8 (DC Input <9 V)	CSL 0
10 (AC Output)	CSL 3

In addition, DOE received comments on specific CSLs for specific product classes. For product class 1 (low-energy, inductive) in particular, the California IOUs encouraged DOE to consider a CSL higher than CSL 3 because, in their view, CSL 3 was shown to be cost effective, leaving a possibility of additional cost-effective savings at higher efficiencies. (California IOUs, No. 43 at p. 5) For product class 2 (low-energy, low-voltage), the California IOUs asserted that DOE's baseline CSL should be lower because the test results presented in the preliminary analysis TSD showed products with UEC levels higher than the baseline value selected by DOE. (California IOUs, No. 43 at p. 6) PTI expressed concern over the max-tech level for product class 4, stating that it would be achievable only by using a lithium-based (i.e. Lithium-ion or ''Li-ion'') battery technology, which is currently used in laptop computer applications. (PTI, No. 47 at p. 8) Finally, when developing a max-tech level for product classes 2, 3 (low-energy, medium voltage), 4 (low-energy, high-voltage), 8 (low-energy, low DC input), and 9 (low-energy, high DC input), the California IOUs suggested that DOE speak to integrated circuit component suppliers. (California IOUs, No. 43 at p. 5)

Based on all of these comments, DOE conducted further analysis and review. For product class 1, DOE conducted additional interviews with manufacturers of these products and has revised its engineering analysis accordingly. DOE believes that the new MSPs, which are shown in section IV.C.2.i, more accurately depict the relationship between cost and efficiency for electric toothbrushes, which is the predominant application in that class.

For product class 2, DOE understands the concerns about creating an accurate baseline UEC for these devices. However, the baseline level that DOE has developed for today's NOPR is representative of the worst performing products tested by DOE. All of the units that showed higher values of energy consumption were products that Ecos, an independent consulting firm and test lab that assisted the CEC when developing a battery charger test procedure, tested and provided to DOE. DOE believes that this factor may be partially explained by timing. Since many of the units tested by Ecos that performed poorly were older test units, it is likely that these devices did not incorporate EPSs that meet the EISA 2007 regulations that went into effect in 2008. Therefore, DOE believes that its current CSL 0 for product class 2 is appropriate and provides a reasonable picture of the current battery charger market.

In response to PTI's comment, DOE clarifies that its preliminary analysis did not include an analysis for CSL 3 in product class 4. DOE obtained results only up to CSL 2 for product class 4. DOE notes that one of the units tested and torn down for that CSL was a power tool. For the NOPR, DOE has developed an analysis for CSL 3 in product class 4, which corresponds to that class's maximum technology level.

Finally, in developing the max-tech levels in the NOPR engineering analysis, DOE relied on input from manufacturers of battery chargers and original equipment manufacturers (OEMs) of products that use battery chargers. Manufacturers were able to provide DOE with sufficient information to enable the agency to ascertain what level of technology is feasible and is capable of surpassing the efficiency levels of incumbent technology currently available at the high end of the market today. Based on this information, DOE tentatively concluded that based on these discussions with manufacturers and OEMs there was sufficient information to define max-tech levels without interviewing integrated circuit suppliers.

e. Test and Teardowns

As mentioned above, the CSLs used in the battery charger engineering analysis were based on the efficiencies of battery chargers available in the market. Following testing, the units corresponding to each commercially available CSL were disassembled to (1) evaluate the presence of energy efficiency design options and (2) estimate the materials cost. The disassemblies included an examination of the general design of the battery charger and helped confirm the presence of any of the technology options discussed in section IV.A.4.f.

After the battery charger units corresponding to the CSLs were evaluated, they were torn down by iSuppli, a DOE contractor and industry expert. An in-depth teardown and cost analysis was performed for each of these units. For some products, like camcorders and notebook computers, the battery charger constitutes a small portion of the circuitry. In evaluating the related costs, iSuppli identified the subset of components in each product enclosure responsible for battery charging. The results of these teardowns were then used as the primary source for the MSPs.

Interested parties offered some feedback regarding DOE's test and teardowns after the preliminary analysis. Stanley Black and Decker suggested that DOE should validate iSuppli's results by having them teardown products whose true costs are known—i.e. those instances where a manufacturer may have supplied data under a non-disclosure agreement. (B&D, Pub. Mtg. Tr., No. 37 at p. 234) AHAM recommended that DOE look at low cost products in product class 4 (e.g. notebook computers and large power tools). Wahl Clipper recommended that DOE estimate costs at lower volume levels than those used in the preliminary analysis—it offered 20,000 units per year as one alternative—because the effects on cost might be greater when components are purchased in lower volumes. (Wahl Clipper, Pub. Mtg. Tr., No. 37 at p. 206) The California IOUs made a number of recommendations to DOE. First, they suggested that DOE use PG&E's battery charger test data and that DOE gather

more teardown data. (California IOUs, No. 43 at p. 2) Second, they supported DOE's decision to leave out packaging costs from the teardown results. In particular, for product class 2 (e.g. mobile and cordless phones), they recommended that DOE conduct teardown analyses of units with slightly higher and lower battery energies. Third, the California IOUs urged DOE to test and tear down a wider array of battery chargers from product classes 5 (e.g. marine chargers) and 7 (e.g. golf cars). They suggested this approach because they claimed that their own test data showed a wider range of efficiencies among battery chargers belonging to these classes. (California IOUs, No. 43 at pp. 4, 6)

For the NOPR, DOE has adopted most of the recommendations raised by commenters and has expanded its test program. DOE has performed additional tests using a variety of products from a number of product classes, including product classes 2, 4, 5, and 7. Further, DOE has performed additional teardown analyses on products from all ten proposed product classes. In total, over 100 new test results have been incorporated into the NOPR analysis. Packaging costs have continued to be excluded because they do not represent costs associated with improving the efficiency of a product. Regarding Wahl Clipper's suggestion to modify the volume assumption to 20,000 in order to determine how costs may change for a lower volume manufacturer, DOE believes that the large number of applications in each product class make it too difficult to select an appropriate low volume level. Additionally, DOE believes that the change in volume that results in higher costs for a manufacturer is likely to have little effect on consumers because the incremental costs from CSL to CSL are likely to be the same regardless of volume.

Finally, DOE verified the accuracy of the iSuppli results by confirming those results with individual manufacturers during interviews. As will be discussed in the following section, DOE performed additional manufacturer interviews for the NOPR and during these interviews, the initial iSuppli results were vetted with manufacturers. DOE believes that it has sufficiently verified the accuracy of its teardown results and believes that all of the engineering costs gleaned from iSuppli are appropriate.

f. Manufacturer Interviews

The preliminary analysis had, in part, relied on information obtained through interviews with several battery charger manufacturers. These manufacturers consisted of companies that manufacture battery chargers and OEMs of battery-operated products who package battery chargers with their end-use products. DOE followed this approach to obtain data on the possible efficiencies and resultant costs of consumer battery chargers.

DOE received two comments regarding manufacturer interviews. First, PTI recommended that DOE speak with power tool manufacturers individually to obtain detailed information that would otherwise be unavailable through PTI as a trade association. (PTI, No. 47 at p. 12) Second, AHAM requested that the manufacturer interviews also involve discussions about testing costs and non-recurring capital expenditures. (AHAM, No. 44 at p. 13)

In preparing the NOPR, additional interviews were conducted, including those with manufacturers who were previously interviewed and new ones who were not. These interviews served two purposes. First, it gave manufacturers the opportunity to provide feedback on the preliminary analysis engineering analysis results. Aggregated information from these results is provided in TSD chapter 5. Second, these interviews also provided manufacturer inputs and comments in preparing the manufacturer impact analysis, which is discussed in detail in section IV.I.

DOE attempted to obtain teardown results for all of its product classes but encountered difficulties in obtaining useful and accurate teardown results for two of its products classes—namely, product class 1 (e.g. electric toothbrushes) and product class 10 (e.g. uninterruptible power supplies). For these two classes, DOE relied heavily on information obtained from manufacturer interviews. DOE found that when it attempted to teardown product class 1 devices, most contained potting (i.e. material used to waterproof internal electronics). Removal of the potting also removed the identifying markings that iSuppli needed to estimate a cost for the components. As a result, manufacturer interview data helped furnish the necessary information to assist DOE in estimating these costs.

In the case of UPSs, DOE found that it was difficult to accurately compare product costs because of the varying functionality of these devices. For example, DOE examined multiple UPSs, some of which provided additional utility to end users, such as AVR. As discussed earlier, AVR involves circuitry that monitors input voltage from the wall and ensures that all products plugged into the UPS see a steady flow of voltage despite any fluctuations. This added circuitry was impossible to distinguish from the standard UPS battery charging circuitry, which made it difficult to compare the costs of products that did not provide the same level of utility to the end-user. Furthermore, because the cost versus efficiency data provided by manufacturers showed economically justifiable levels through the max-tech level developed in the preliminary analysis, DOE believed that these data were sufficient to set out the proposed levels without resorting to a more time-consuming tear-down analysis. However, after a second round of interviews with UPS manufacturers for the NOPR and conducting additional analysis (including testing), DOE found that it needed to make a modification to its approach for dealing with battery chargers within UPSs.

When DOE tested UPSs according to the battery charger test procedure, it was unable to obtain maintenance mode power measurements as low (i.e. as good in terms of energy consumption) as those that manufacturers indicated were possible. DOE believes that the discrepancies between its test measurements and the data provided by manufacturers stems from the manner in which the test procedure measures energy consumption. TP measures consumption of unit as a whole—the entire UPS. BC only is using from mfr data. In particular, the DOE test procedure measures the energy consumption of the unit—in this case, the UPS—as a whole. Measuring the energy consumption of the battery charger alone in this instance would involve destructive testing. As a result, the data that DOE derived following its current test procedure for battery chargers includes the energy consumption from other UPS components other than the battery charger itself. For this reason, in this instance, DOE believes that the manufacturer-supplied data is more likely to accurately reflect the actual energy consumption of the battery charger alone. Because manufacturers would be unlikely to over-estimate the potential energy consumption of their products, DOE believes that their estimates of power consumption from the UPS's battery charger are still appropriate estimates. However, DOE still needs to account for the discrepancies between the manufacturer data and the measurements from its test procedure.

For the NOPR, DOE conducted additional testing of UPSs in which it attempted to describe the differences between its test procedure measurement

and the values provided by manufacturers. During this round of testing, DOE performed the DOE test procedure, but added another measurement. As mentioned previously, while it is extremely difficult to isolate the power consumption due to battery charging from any other UPS functionality, the input power to the battery itself can be measured. With this measurement, DOE obtained two useful pieces of information. First, it allowed DOE to isolate a portion of battery charging power consumption from all other functions within a UPS and develop a trend line that describes how maintenance mode power will vary as battery energy changes. Second, this measurement, combined with the data from the tested units that corresponded to DOE's best-in-market test results (in terms of maintenance mode power as measured in the DOE test procedure), allowed DOE to develop supplemental values that it could use to increment the data provided by manufacturer such that it correlated to DOE test results. These values essentially operate as a means to account for the additional energy consumption used by a device when providing additional functionality. DOE developed two values, shown in Table IV–15 below, one for basic UPSs and one for UPSs that incorporate AVR. See TSD Chapter 5 for additional details. DOE is proposing to use these two values to develop an appropriate standard for basic UPSs and UPSs with AVR, after DOE proposes selecting an appropriate TSL for product 10.

TABLE IV–15—SUPPLEMENTAL VALUES FOR PRODUCT CLASSES 10A AND 10B

Product class	Maintenance mode supplemental value for proposed standard (W)	UEC supplemental value for proposed standard (kWh/yr)
10a (UPSs without AVR)	0.4	3.45
10b (UPSs with AVR)	0.8	7.08

g. Design Options

Design options are technology options that remain viable for use in the engineering analysis after applying the screening analysis as discussed above in section IV.B.

In response to the preliminary analysis, DOE received comments regarding design options and their application to the overall analysis. The California IOUs indicated that, with respect to the larger battery charger product classes where lead-acid batteries are most common, DOE should apply technologies more common in smaller units, such as switch-mode power supplies, to these devices in the analysis. (California IOUs, No. 43 at p. 5) NEEP made similar suggestions and stated that DOE should examine whether technologies can be applied across multiple product classes. (NEEP, No. 51 at p. 2) However, CEA urged DOE to account for the differences in battery chemistries and determine the appropriateness of given technologies for certain applications. CEA added that DOE must consider how battery technologies could be impacted by new efficiency requirements. (CEA, No. 48 at p. 2) Motorola expressed similar concerns and noted that although certain battery chemistries are less efficient, those chemistries may have other inherently important features like wider temperature range operations and improved cycle-life. Motorola insisted that these things should be considered when DOE conducts its technical and economic analyses. (Motorola, No. 50 at p. 2) Stanley Black and Decker added that DOE should not assume that additional utility is desirable as it will likely cause an increase in cost to the consumer. (SBD, Pub. Mtg. Tr., No. 37 at pp. 147–148) Finally, Lester commented that transformer-based chargers are more reliable, durable and provide batteries with a much longer life expectancy. Lester added that these chargers are often preferable to more efficient switch-mode chargers in industrial applications. (Lester, No. 52 at p. 2) Lester did not include any additional data to corroborate their statements regarding increased durability for battery chargers that are transformer-based and the life expectancy for batteries that use such chargers.

DOE clarifies that all technology options that are not eliminated in the screening analysis (section IV.B) become design options that are considered in the engineering analysis. As most CSLs are based on actual teardowns of units manufactured and sold in today's battery charger market, DOE did not control which design options were used at each CSL. No technology options were preemptively eliminated from use with a particular product class. Similarly, if products are being manufactured and sold, DOE believes that fact indicates the absence of any significant loss in utility, such as an extremely limited operating temperature range or shortened cycle-life. Therefore, DOE believes that all CSLs can be met with technologies that are feasible and that fit the intended application.

For the max-tech designs, which are not commercially available, DOE developed these levels in part with a focus on maintaining product utility as projected energy efficiency improved. Although some features, such as decreased charge time, were considered as added utilities, DOE did not assign any monetary value to such features. Additionally, DOE did not assume that such features were undesirable, particularly if the incremental improvement in performance causes a significant savings in energy costs. Finally, DOE appreciates the need to consider durability, reliability, and other performance and utility related features that affect consumer behavior. On these issues, DOE seeks information, including substantive data, to help it assess these factors in consumer products.

h. Cost Model

Today's NOPR continues to apply the same approach used in the preliminary analysis to generate the manufacturer selling prices (MSPs) for the engineering analysis. For those product classes other than product classes 1 and 10, DOE's MSPs rely on the teardown results obtained from iSuppli. The bills of materials provided by iSuppli were multiplied by a markup that depended on product class. For those product classes for which DOE could not estimate MSPs using the iSuppli teardowns—product classes 1 and 10—DOE relied on aggregate manufacturer interview data, which projected that economic savings would accrue through the max-tech level in the preliminary analysis.

Additional details regarding the cost model and the markups assumed for each product class are presented in TSD chapter 5.

i. Battery Charger Engineering Results

The results of the engineering analysis are reported as cost-efficiency data (or ''curves'') in the form of MSP (in dollars) versus unit energy consumption (in kWh/yr). These data form the basis for the NOPR analyses. This section illustrates the results that DOE obtained for all 10 product classes in its NOPR engineering analysis.

Table IV-16 Product Class 1 (Inductive Chargers) Engineering Analysis Results

	CSL 0	CSL 1	CSL 2	CSL 3
CSL Description	Baseline	Intermediate	Best in Market	Max Tech
24 Hour Energy (Wh)	26.7	19.3	10.8	5.9
Maintenance Mode Power (W)	1.2	0.8	0.4	0.2
No-Battery Mode Power (W)	0.5	0.4	0.2	0.1
Off-Mode Power (W)	0.0	0.0	0.0	0.0
Unit Energy Consumption (kWh/yr)	8.73	6.10	3.04	1.29
MSP [$]	$2.05	$2.30	$2.80	$6.80

In response to the engineering results that DOE provided in the preliminary analysis for product class 1, DOE received one comment from Philips. Philips publicly submitted estimates of ''what the consumer pays,'' for CSLs 0, 1, 2, and 3 for product class 1. Philips suggested that those values would be $8, $10, $15, and $24, respectively. (Philips, No. 43 at p. 2) In its preliminary analysis, DOE proposed MSPs for product class 1 to be: $2.05, $2.22, $2.45, $2.60, for CSLs 0 through 3 respectively. Although DOE appreciates the feedback provided by Philips, it is vastly different from the information gathered on manufacturer interviews. DOE believes this discrepancy is partially due to a misinterpretation of the term MSP. The values that Philips provided, as it has described them, would correspond to what DOE considers a retail price and not an MSP. DOE has revised its MSPs for product class 1 according to the data obtained from manufacturers on interviews for the NOPR.

Table IV-17 Product Class 2 (Low-Energy, Low-Voltage) Engineering Analysis Results

	CSL 0	CSL 1	CSL 2	CSL 3	CSL 4
CSL Description	Baseline	Intermediate	2nd Intermediate	Best in Market	Max Tech
24 Hour Energy (Wh)	46.5	36.9	19.7	8.2	6.9
Maintenance Mode Power (W)	1.8	1.4	0.5	0.1	0.04
No-Battery Mode Power (W)	0.70	0.30	0.08	0.08	0.05
Off-Mode Power (W)	0.0	0.0	0.0	0.0	0.0
Unit Energy Consumption (kWh/yr)	8.66	6.47	2.86	1.03	0.81
MSP [$]	$0.62	$0.71	$2.13	$3.84	$5.72

DOE did not receive any specific comments on its product class 2 engineering results in the preliminary analysis, but its revised results are presented in Table IV–17.

Table IV-18 Product Class 3 (Low-Energy, Medium-Voltage) Engineering Analysis Results

	CSL 0	CSL 1	CSL 2	CSL 3
CSL Description	Baseline	Intermediate	Best in Market	Max Tech
24 Hour Energy (Wh)	123.0	53.6	17.0	15.9
Maintenance Mode Power (W)	4.5	1.8	0.3	0.3
No-Battery Mode Power (W)	3.5	1.0	0.2	0.2
Off-Mode Power (W)	0.0	0.0	0.0	0.0
Unit Energy Consumption (kWh/yr)	11.90	4.68	0.79	0.75
MSP [$]	$0.77	$1.98	$5.47	$5.51

DOE did not receive any specific comments on its product class 3 engineering results in the preliminary analysis, but its revised results are presented in Table IV–18.

Table IV-19 Product Class 4 (Low-Energy, High-Voltage) Engineering Analysis Results

	CSL 0	CSL 1	CSL 2	CSL 3
CSL Description	Baseline	Intermediate	Best in Market	Max Tech
24 Hour Energy (Wh)	167.5	52.6	39.1	27.2
Maintenance Mode Power (W)	5.9	1.4	0.5	0.4
No-Battery Mode Power (W)	2.2	1.4	0.3	0.3
Off-Mode Power (W)	0.0	0.0	0.0	0.0
Unit Energy Consumption (kWh/yr)	37.73	9.91	4.57	3.01
MSP [$]	$3.79	$6.76	$12.71	$18.34

DOE did not receive any specific comments on its product class 4 engineering results in the preliminary analysis, but its revised results are presented in Table IV–19.

Table IV-20 Product Class 5 (Medium-Energy, Low-Voltage) Engineering Analysis Results

	CSL 0	CSL 1	CSL 2	CSL 3
CSL Description	Baseline	Intermediate	Best in Market	Max Tech
24 Hour Energy (Wh)	2036.9	1647.3	1195.5	1180.0
Maintenance Mode Power (W)	21.2	11.9	8.0	0.0
No-Battery Mode Power (W)	20.1	11.6	4.2	0.0
Off-Mode Power (W)	0.0	0.0	0.0	0.0
Unit Energy Consumption (kWh/yr)	84.60	56.09	29.26	15.35
Incremental MSP [$]	$18.48	$21.71	$15.69	$127.00

DOE did not receive any specific comments on its product class 5 engineering results in the preliminary analysis, but its revised results are presented in Table IV–20.

Table IV-21 Product Class 6 (Medium-Energy, High-Voltage) Engineering Analysis Results

	CSL 0	CSL 1	CSL 2	CSL 3
CSL Description	Baseline	Intermediate	Best in Market	Max Tech
24 Hour Energy (Wh)	891.6	786.1	561.0	536.4
Maintenance Mode Power (W)	10.6	6.0	4.0	0.0
No-Battery Mode Power (W)	10.0	5.8	2.1	0.0
Off-Mode Power (W)	0.0	0.0	0.0	0.0
Unit Energy Consumption (kWh/yr)	120.60	81.72	38.33	16.79
Incremental MSP [$]	$18.48	$21.71	$15.69	$127.00

For product class 6, DOE performed additional product testing for the NOPR, but did not obtain a complete data set upon which to base its engineering analysis. This situation was due in large part to DOE's inability to locate products with sufficiently similar battery energies and the fact that the products tested did not span a significant range of performance. DOE's test data for this product class are available in chapter 5 of the accompanying TSD. In order to develop an engineering analysis for this product class, DOE relied on, among other things, the results gleaned from product class 5, interviews with manufacturers, and its limited test data from product class 6.

The difference between product class 5 and product class 6 is the range of voltages that are covered. Product class 5 covers low-voltage (less than 20 V) and medium energy (100 Wh to 3,000 Wh) products, while product class 6 covers high-voltage (greater than or equal to 20 V) and medium energy (100 Wh to 3,000 Wh) products. The representative unit examined for product class 5 is a 12 V, 800 Wh battery charger, while the representative unit analyzed for product class 6 is a 24 V, 400 Wh battery charger. Despite the change in voltage, DOE believes that similar technology options and battery charging strategies are available in both classes. Both chargers are used with relatively large sealed-lead acid batteries in products like wheelchairs, electric scooters, and electric lawn mowers. However, since the battery chargers in product class 6 work with higher voltages, current can be reduced for the same output power, which creates the potential for making these devices

slightly more efficient because I^2R losses [36] will be reduced.

For the NOPR, DOE examined its product class 5 results and analyzed how the performance may be impacted if similar technologies are used. The resulting performance parameters are shown in Table IV–21. To account for the projected variation in energy consumption, DOE used information on charge time and maintenance mode power to adjust the corresponding values for 24-hour energy. Additionally, DOE discussed with manufacturers about how costs may differ in manufacturing a 12 V (product class 5) charger versus a 24 V (product class 6) charger. Manufacturers indicated that, holding constant all other factors, there would likely be minimal change, if any, in the cost. Therefore, because DOE scaled performance assuming that the designs for corresponding CSLs in each product class used the same design options and only differed in voltage, DOE did not scale costs from product class 5. Rather than scaling the product class 5 costs, DOE used the same MSP's for product class 6 that were developed from iSuppli tear down data for product class 5. DOE believes these costs are an accurate representation of the MSPs and seeks comment on its methodology in scaling the results of product class 5 to product class 6, including the decision to hold MSPs constant.

Table IV-22 Product Class 7 (High-Energy) Engineering Analysis Results

	CSL 0	CSL 1	CSL 2
CSL Description	Baseline	Intermediate	Max Tech
24 Hour Energy (Wh)	5884.2	5311.1	4860.0
Maintenance Mode Power (W)	10.0	3.3	2.6
No-Battery Mode Power (W)	0.0	1.5	0.0
Off-Mode Power (W)	0.0	0.0	0.0
Unit Energy Consumption (kWh/yr)	255.05	191.74	131.44
Incremental MSP [$]	$88.07	$60.86	$164.14

DOE did not receive any specific comments on its product class 7 results in the preliminary analysis, but its revised results are presented in Table IV–22.

Table IV-23 Product Class 8 (Low-Voltage DC Input) Engineering Analysis Results

	CSL 0	CSL 1	CSL 2	CSL 3
CSL Description	Baseline	Intermediate	Best in Market	Max Tech
24 Hour Energy (Wh)	10.4	8.4	3.7	3.1
Maintenance Mode Power (W)	0.3	0.2	0.1	0.04
No-Battery Mode Power (W)	0.0	0.0	0.0	0.0
Off-Mode Power (W)	0.0	0.0	0.0	0.0
Unit Energy Consumption (kWh/yr)	0.90	0.66	0.24	0.19
MSP [$]	$5.90	$3.26	$5.77	$5.95

Product class 8 (e.g. MP3 players and smartphones) consists of devices that charge with a DC input of less than 9 V, which is mostly those products that charge via USB connections. When DOE analyzed this product class it tested and tore down 3 devices, one for CSL 0, 1, and 2; and all of which were MP3 players.

[36] In electrical circuits, I^2R losses manifests themselves as heat and are the result of high levels of current flow through a device.

DOE's analysis projects a significant drop in MSP from CSL 0 to CSL 1. See Table IV–23. Because of this drop, DOE tentatively believes that at least one of its trial standard levels for this product class meets DOE's criteria for being economically justified and technologically feasible. However, the baseline unit MSP for this analysis may be inflated due to the cost of the particular integrated circuit used in that unit. The integrated circuit used in this device performs additional functions besides battery charging and constitutes a significant portion of the bill of materials generated by iSuppli. DOE was unable to determine what portion of the integrated circuit was dedicated to battery charging and therefore, kept the entire cost of the component in its bill of materials. Because of this factor and the minimal differences in energy consumption between each CSL for product class 8, DOE is considering an alternative approach in addition to its proposed standard. Both the proposed standard and the alternative approach are outlined in 0 and, as with all other product class data, DOE seeks comment on its MSP projections for product class data.

Table IV-24 Product Class 9 (High-Voltage DC Input) Engineering Analysis Results

	CSL 0	CSL 1	CSL 2
CSL Description	Baseline	Intermediate	Best in Market
24 Hour Energy (Wh)	48.1	13.5	8.1
Maintenance Mode Power (W)	1.8	0.2	0.2
No-Battery Mode Power (W)	0.0	0.1	0.1
Off-Mode Power (W)	0.0	0.0	0.0
Unit Energy Consumption (kWh/yr)	0.79	0.26	0.13
MSP [$]	$1.94	$2.77	$3.02

For the preliminary analysis, DOE scaled the results of other product classes to obtain results for product class 9. The results of DOE's revised analysis, based on test and teardown results, are shown in Table IV–24.

Table IV-25 Product Class 10 (AC Input, AC Output) Engineering Analysis Results

	CSL 0	CSL 1	CSL 2	CSL 3
CSL Description	Baseline	Intermediate	Best in Market	Max Tech
24 Hour Energy (Wh)	-	-	-	-
Maintenance Mode Power (W)	2.2	0.7	0.5	0.2
No-Battery Mode Power (W)	0.0	0.0	0.0	0.0
Off-Mode Power (W)	0.0	0.0	0.0	0.0
Unit Energy Consumption (kWh/yr)	19.27	6.13	4.00	1.50
Incremental Unit Energy Consumption (kWh/yr)	-	13.14	2.13	2.50
MSP [$]	$2.76	$3.93	$4.25	$4.64

As discussed previously, DOE believes that the engineering analysis results it developed in the preliminary analysis using manufacturer-supplied data provide an appropriate estimate of the cost-versus-UEC (or maintenance mode power) relationship for the battery charger embedded within a UPS. Also as discussed previously, DOE believes that this relationship is appropriate for UPSs, regardless of whether they have AVR. Consequently, DOE has used one set of engineering data, presented in Table IV–25 above, in all of the subsequent analyses (e.g. the LCC and NIA). DOE contends that this is an accurate approach because the technologies available in designing a battery charger used within a UPS are the same whether or not that UPS has AVR. The corresponding costs for these technologies would also result in the same MSP for the battery charger as a component of the UPS.

Finally, in the preliminary analysis, DOE developed cost-efficiency curves based on both manufacturer interviews

and when possible, test and teardown results. As a result of some differences in these curves, NEEP suggested that DOE should reconcile differences in the results obtained from manufacturer data and from teardowns. (NEEP, No. 51 at p. 4)

The data obtained from teardowns that was available at the time of manufacturer interviews was included in the interview guide and discussed at those meetings. DOE continued to conduct teardowns after those meetings and has added data that will be available for public comment. Through that process, DOE seeks to continue to refine its analysis and to mitigate any differences between the teardown and manufacturer data.

j. Scaling of Battery Charger Candidate Standard Levels

To establish its proposed energy conservation standards for products with all battery energies and battery voltages within a product class, DOE developed a UEC scaling approach. After developing the engineering analysis results for the representative units, DOE had to determine a methodology for extending the UEC at each CSL to all other ratings not directly analyzed for a given product class. DOE had initially raised the possibility of using UEC as a function of battery energy. DOE also indicated that it might base this UEC function on the test data that had been obtained up through the preliminary analysis.[37]

Numerous interested parties submitted comments regarding the potential scaling methodology. AHAM generally supported DOE's proposed approach in which the UEC was scaled with regards to battery energy but suggested that DOE hold UEC constant below a certain value of battery energy because the fixed losses in these low-energy, lower power units begin to dominate and more stringent standards risk becoming overly restrictive on the ability of manufacturers to design useful products for consumers. AHAM also suggested that DOE consider UEC as a function of battery voltage. (AHAM, No. 44 at p. 9) PTI made similar suggestions and commented that it may be appropriate for UEC to remain constant for battery energies below the representative unit value. (PTI, No. 47 at p. 9)

The California IOUs suggested applying a single scaling relationship for active mode energy for product classes 2 through 7. For battery chargers with very high battery energies, such as those used in golf cars, the California IOUs believed that a flat or constant standard might be appropriate. (California IOUs, No. 43 at pp. 3–4) The California IOUs also argued that a potential scaling approach based on the test results of multi-capacity battery chargers would be inaccurate and argued that it should be dropped. They indicated that a scaling relationship based on such products would be demonstrative of products that are capable of using multiple batteries rather than products representative of the bulk of battery chargers, which are designed for a single specific battery. (California IOUs, No. 43 at p. 6) Finally, these commenters asserted that maintenance mode power and no-battery mode power should be regulated independently of battery energy, as many of the same design options are applicable to small and large energy battery chargers. Because of these similarities, the California IOUs asserted that all battery chargers, regardless of battery size, should be capable of the same level of performance in those modes of operation and DOE should assume this value is constant irrespective of battery energy. (California IOUs, No. 43, at p. 7)

DOE considered the comments it received and refined its scaling approach for the NOPR. In particular, DOE evaluated scaling approaches based on the battery voltage and the battery energy and found that the latter is a more appropriate way to model its scaling methodology. When DOE examined its test results, it noted a much weaker correlation between battery voltage and UEC than between battery energy and UEC. See TSD, appendix 5C. DOE also noticed from its test results that the individual performance parameters, such as maintenance mode power, no-battery mode power, and 24-hour energy, could be formulated as functions of battery energy. See TSD, Chapter 5. For this reason, DOE did not follow the recommendation of the California IOUs to leave some performance parameters constant.

Additionally, DOE is proposing to scale UEC as a function of battery energy for golf cars. The TSD shows that, as battery energy increases, so too does the UEC because more energy is needed to charge the larger battery. See TSD, chapter 5 (discussing test results related to product classes 5, 6, and 7 that demonstrate the linear relationship between increasing battery energy and UEC). DOE also found that this trend was true for product class 10 devices (UPSs), which incorporate lead-acid batteries. The details on the scaling methodology for these products are also available in TSD chapter 5.

In contrast, for product classes 1 and 8 DOE is proposing that all devices within those product classes be required to meet one nominal standard. For these product classes, battery energy appeared to have little impact on the UEC's that were calculated. Accordingly, to account for these differences, DOE is tentatively proposing two separate approaches for scaling UEC based on these test results—i.e. one that scales with battery energy and another that remains at a single, nominal level.

DOE's scaling approach for the NOPR relies heavily on the test data that it has gathered throughout the rulemaking process. DOE examined each performance parameter individually and, when possible, looked at groups of product class test results. For example, product classes 2, 3, and 4 are similar products that use similar technologies and span the same battery energy ratings. In these cases, DOE examined all of these test results together. DOE also developed regression equations for each of the performance parameters needed to calculate UEC and ultimately, aggregated those equations with assumptions about usage profiles for each product class. That is, DOE examined test results for maintenance mode power, no-battery mode power, and 24-hour energy individually and relative to battery energy. From these data, DOE derived equations for each parameter as it relates to battery energy. Because each equation was a function of the same parameter, battery energy, each one could be combined with assumptions about product usage to develop a single UEC equation that was also a function of battery energy.

For product classes other than product classes 1, 8, and 10, DOE developed equations that use different slopes for different CSLs. For higher CSL equations in a given product class, the slope of the UEC line becomes smaller, which means that the line describing UEC versus battery energy becomes flatter. DOE found that when it filtered its test results and examined products with similar technologies (e.g. lithium-ion chemistry batteries) spanning a range of battery energy levels, the slope of the line generated for 24-hour energy correlated to the inverse of 24-hour efficiency, which is the ratio of measured battery energy to 24-hour energy, expressed as a percentage. Thus, as products became more efficient, the

[37] At the preliminary analysis public meeting, DOE handed out a supplemental slide deck, which outlined preliminary ideas to scaling UEC based on test data and with respect to battery energy. See these slides available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/battery_external_preliminaryanalysis_public_mtg.html.*

slope of the equation used to describe UEC versus battery energy became flatter.

Finally, DOE adopted the suggestions offered by AHAM and PTI regarding the treatment of small battery energies. When DOE was developing its CSL equations for UEC, it found during testing that the correlation between points at low battery energies was much worse than for the rest of the range of battery energy, which indicated that the initial equations DOE had initially planned to use did not match the test results. To address this situation, DOE generated a boundary condition for its CSL equations, which essentially flattens the UEC below a certain threshold of battery energy to recognize that below certain values, fixed power components of UEC, such as maintenance mode power, dominate UEC. Making this change helped DOE to create a better-fitting equation to account for these types of conditions to ensure that any standards that are set better reflect the particular characteristics of a given product.

For additional details and the exact CSL equations developed for each product class, please see TSD chapter 5.

D. Markups To Determine Product Price

The markups analysis develops appropriate markups in the distribution chain to convert the MSP estimates derived in the engineering analysis to consumer prices. At each step in the distribution chain, companies mark up the price of the product to cover business costs and profit margin. Given the variety of products that use battery chargers and EPSs, distribution varies depending on the product class and application. As such, DOE assumed that the dominant path to market establishes the retail price and, thus, the composite markup for a given application. The markups applied to end-use products that use battery chargers and EPSs are approximations of the battery charger and EPS markups.

In the case of battery chargers and EPSs, the dominant path to market typically involves an end-use product manufacturer (i.e. OEM) and retailer. DOE developed OEM and retailer markups by examining annual financial filings, such as Securities and Exchange Commission (SEC) 10–K reports, from more than 80 publicly traded OEMs, retailers, and distributors engaged in the manufacturing and/or sales of consumer applications that use battery chargers or EPSs.

Retail prices for EPSs in product class H (e.g. EPSs for amateur radios) were readily available, as these devices are not typically bundled with a consumer application. Thus, using these retail prices and the component costs determined in its teardown analysis, DOE was able to derive markups for EPSs in product class H.

DOE typically calculates two markups for each product in the markups analysis. These are: a markup applied to the baseline component of a product's cost (referred to as a baseline markup) and a markup applied to the incremental cost increase that results from standards (referred to as an incremental markup). The incremental markup relates the change in the MSP of higher-efficiency models (the incremental cost increase) to the change in the retailer's selling price.

In the preliminary analysis public meeting, PTI commented that DOE neglected to take into account situations in which an EPS is purchased by a battery charger manufacturer to be integrated into a battery charger. In these cases, the completed battery charger (with integrated EPS) is sold to an OEM to be packaged with an end-use application. Philips explained that three markups would be applied to the MSP of these EPSs: One by the battery charger manufacturer, one by the OEM, and one by the retailer. (PTI, Pub. Mtg. Tr., No. 57 at p. 316)

DOE agrees that, for situations in which this additional step occurs, the battery charger manufacturer would need to cover its costs and profit margin with a markup. However, given DOE's assumption that the dominant path to market sets the final product price, it is only for those classes of EPS for which this is the most common path to market that the final product price would be affected. DOE believes that this situation would primarily apply to EPSs that exclusively provide power to a stand-alone battery charger, such as EPSs for power tools, garden-care equipment, and other applications with detachable batteries. As explained in section IV.A.1 above, DOE did not quantify savings for EPSs that cannot directly power an end-use consumer product (*i.e.,* EPSs that only provide power to a battery charger), and, therefore, DOE did not quantify markups for these ''indirect operation'' EPSs. The remaining EPSs that power battery chargers can also power an application directly, meaning that the EPS is not exclusively a component of the battery charger. Instead, it is a component of the application itself, *e.g.,* a notebook computer. In those cases, DOE assumes that it is more common that the OEM, rather than the battery charger manufacturer, sources the EPS, making a third markup unnecessary.

AHAM commented that engineering costs to integrate a battery charger into an end-use consumer product are typically higher than those for an EPS, and it may be inappropriate to apply an incremental markup to battery chargers at the OEM stage that is lower than the baseline markup. (AHAM, Pub. Mtg. Tr., No. 57 at p. 325)

To calculate incremental markups, DOE subtracted ''selling, general, and administrative expenses'' (SG&A) from net profit to yield operating profit. Dividing this amount by the revenue value yields an incremental markup. By subtracting SG&A from net profit, DOE assumes that indirect costs (such as indirect labor and overhead) remain constant when a product becomes more efficient and, therefore, do not need to be accounted for in the incremental markup. Given that SG&A does not include research and development (R&D) or engineering costs, any direct labor, R&D, engineering, and other direct expenses that OEMs incur when integrating a more efficient battery charger into an application are assumed to be recovered through the incremental markup.

Chapter 6 of the TSD provides additional detail on the markups analysis.

E. Energy Use Analysis

DOE estimated the annual energy use of products in the field as they are used by consumers. The energy use analysis provides the basis for other analyses, particularly assessments of the energy savings and the savings in consumer operating costs that could result from DOE's adoption of new or amended standards. While the DOE test procedure provides standardized results that can serve as the basis for comparing the performance of different products used under the same conditions, the energy use analysis seeks to capture the range of operating conditions for battery chargers and EPSs in the United States.

Battery chargers and EPSs are power conversion devices that transform input voltage to a suitable voltage for the end-use application or battery they are powering. A portion of the energy that flows into a battery charger or EPS flows out to a battery or end-use product and, thus, cannot be considered to be consumed by the battery charger or EPS. However, to provide the necessary output power, other factors contribute to battery charger and EPS energy consumption—e.g. internal losses and overhead circuitry.[38] Therefore, the

[38] Internal losses are energy losses that occur during the power conversion process. Overhead circuitry refers to circuits and other components of

traditional method for calculating energy consumption—by measuring the energy a product draws from mains while performing its intended function(s)—is not appropriate for battery chargers and EPSs. Instead, DOE considered energy consumption to be the energy dissipated by the battery charger or EPS (losses) and not delivered to the end-use product or battery as a more accurate means to determine the energy consumption of these products. Once the energy and power requirements of those end-use products and batteries were determined, DOE considered them fixed, and DOE analyzed only how standards would affect the energy consumption of the battery chargers and EPSs themselves.

DOE applied a single usage profile for each application to calculate the unit energy consumption for battery chargers and EPSs. However, usage varies by application and among users. DOE examined the usage profiles of multiple user types for applications where usage varies widely (for example, a light user and a heavy user or an amateur user and professional user). AHAM suggested that DOE revisit, and possibly revise, its usage profile assumptions for the NOPR stage analyses. (AHAM, No. 42 at p. 8) As new information became available and analytical methodologies were altered, DOE revisited its usage profile assumptions to ensure the accuracy of its NOPR analyses. As part of its NOPR analysis, DOE re-examined its initial usage profiles in the following ways:

- New applications were added or existing applications were combined;
- Existing applications were divided into applications used in a commercial setting and applications used in a residential setting;
- New sources (such as published studies or data from stakeholders) were made available or new data were provided to DOE; and/or
- Tested charge times indicated that DOE's usage profiles were in need of revision.

DOE also explored high- and low-savings scenarios in an LCC sensitivity analysis. Values that varied in this sensitivity analysis included battery charger and EPS usage profiles and EPS loading points. Varying these values allowed DOE to account for uncertainty in the average usage profiles and explore the effect that usage variations might have on energy consumption, life-cycle cost, and payback. Additional information on this sensitivity analysis is contained in appendix 8B to the TSD.

DOE does not assume the existence of a rebound effect, in which consumers would increase use in response to an increase in energy efficiency and resulting decrease in operating costs. For BCs and EPSs, DOE expects that, in light of the small amount of savings expected over the course of the year, the rebound effect is likely to be negligible because consumers are unlikely to notice the decrease in operating costs that would result from new standards for these products.

At the preliminary analysis public meeting, PG&E, through its consultant Ecos, commented that DOE should adopt the simplified approach to battery charger usage profiles being pursued by California. It claimed that the wide variety of end-use applications and end users makes it infeasible to accurately characterize usage for battery chargers. It recommended instead that DOE assign all applications to one of two categories: those that are charged rarely (such as battery chargers for uninterruptible power supplies and other backup batteries) and those that are charged sometimes (all other battery chargers). (Ecos/PG&E, Pub. Mtg. Tr., No. 57 at p. 30) In a joint letter submitted to DOE, energy efficiency advocates echoed these sentiments and suggested that DOE group products into one of two possible general duty cycles: 'charged some of the time' and 'almost always in maintenance mode.''' (PG&E, et al., No. 47 at p. 2) In the preliminary analysis public meeting, PTI commented that taking into account usage profiles to analyze annual energy consumption is the correct approach because it is the only way to express meaningful savings to the public. PTI reiterated its support for DOE's proposed approach in its written comments, claiming that increased detail allows for a more accurate understanding of variations in use and a basis for estimating actual energy consumption. PTI also stated that it ''believe[s] that the subsequent UEC calculation based upon usage patterns provides a meaningful measure of energy use.'' (PTI, Pub. Mtg. Tr., No. 57 at p. 378 and No. 45 at pp. 7–8) AHAM supported the continued use of usage profiles in estimating unit energy consumption and emphasized that, because of their critical nature, usage profiles should be more exact, not simplified. (AHAM, Pub. Mtg. Tr., No. 57 at p. 376 and No. 42 at p. 8)

In developing its usage profiles, DOE relied on empirical data for more than 40 applications. These data primarily consisted of user surveys, metering studies, and stakeholder input. Collectively, the analyzed applications for which DOE has empirical usage data accounted for more than 80 percent of annual aggregate battery charger energy use, because the available data focused mainly on the more common, high-powered, and high-use applications. Usage profiles for the remaining applications were derived from these known usage profiles. DOE recognizes that the calculation of usage profiles is not an exact science, but is confident that energy use and potential savings can be more accurately estimated if application-specific use is taken into account. Therefore, based on data and arguments presented to DOE to date, DOE is proposing to continue to use the same basic approach to battery charger usage profiles that it used in the preliminary analysis.

Philips questioned DOE's initial assumption during the preliminary analysis phase that seldom-used applications, such as beard and mustache trimmers, are plugged in, on average, one hour per day. Instead, Philips stated that such products are rarely charged and the potential energy savings from regulating battery chargers and EPSs that power these products would be very small. (Philips, Pub. Mtg. Tr., No. 57 at pp. 130–131) AHAM commented that many of the products that DOE assumes to be charged for one hour per week, such as personal care products and other portable appliances, are typically charged less frequently. (AHAM, No. 42 at p. 6)

DOE's usage profiles are intended to represent an average usage scenario across all users, rather than any particular type of user. DOE recognizes that while many users likely have these products plugged in for less than one hour per day, others (specifically those with cradle chargers) tend to leave these products plugged in for more than one hour per day. Some users may rarely, if ever, unplug their chargers. Given these possible variations in usage, DOE revisited its assumed usage profiles for personal care products and other infrequently charged products. DOE opted to leave its usage profiles for beard and mustache trimmers and hair clippers unchanged in the reference case, but also to explore high- and low-use scenarios in the LCC sensitivity analyses. Upon further analysis, DOE agrees with AHAM and Philips that some small, portable applications are charged, on average, less frequently than indicated in the preliminary analysis (1 hour per week). Thus, DOE reduced the amount of time in active and maintenance modes to 0.5 hours per week for air mattress pumps, mixers, blenders, handheld GPSs, and residential portable printers. DOE also explored the effects of lower use for

the EPS, such as monitoring circuits, logic circuits, and LED indicator lights, that consume power but do not directly contribute power to the end-use application.

other applications in the LCC sensitivity analysis.

Philips also suggested the following usage profile for battery chargers in product class 1 (inductive chargers for use in wet environments):

1. Active + Maintenance = 17.25 hr/day
2. Unplugged = 6.48 hr/day
3. No Battery = 0.11 hr/day
4. Off = 0 hr day
5. Charges per day = 0.048 (Philips, No. 41 at p. 2)

DOE's usage profile from its preliminary analysis, which was provided by PG&E (Ecos Consulting, No. 30), assumed that all products in product class 1 are cradle-charged and, thus, are never unplugged. While DOE tentatively agrees with Philips that some users unplug their chargers once the product is charged, PG&E's research suggests that Philips overestimated the number of users who unplug between charges (and by extension, the amount of time the average unit spends unplugged). Thus, for the NOPR, DOE used an average of the usage profiles provided by PG&E and Philips for its reference case usage profile. This resulted in a usage profile that assumed those products spend some time in unplugged mode, but less than the time suggested by Philips. High- and low-use scenarios for the applications in product class 1 were explored in the LCC sensitivity analysis.

Stanley Black & Decker commented that outdoor gardening appliances are typically used seasonally, and that the initial unit energy consumption values for these products that DOE had considered during the preliminary analysis phase should be reduced by half. It added, though, that DOE should maintain its lifetime assumptions from the preliminary analysis. (SBD, No. 44 at p. 1) DOE agrees that these products are typically used seasonally and notes that it had already accounted for seasonal use, as suggested by Stanley Black & Decker, when it created the usage profiles in the preliminary analysis. The usage profile that DOE used in the NOPR-stage analysis continues to apply a seasonal use assumption for these products.

Cobra Electronics claimed that the typical residential two-way radio is charged less than once per week, since residential consumers tend to use these products a few times per year. (Cobra, No. 51 at p. 2) DOE agrees that residential use of two-way radios is likely to be infrequent, but also recognizes that many of the two-way radios used by residential users are also available to commercial users, who charge these products far more frequently. In preparation of the NOPR analysis, DOE analyzed the energy use of the two-way radio application separately for those products charged in a residential setting and those products charged in a commercial setting. DOE assumed that two-way radios charged in a residential setting are charged infrequently, as was suggested by Cobra, while those charged in a commercial setting are charged more frequently.

Lester commented that ''the reduction in energy loss as estimated is overstated for golf cars due to mistaken assumptions about the duty cycle and corresponding energy use.'' (Lester, No. 53 at p. 2) DOE remains confident in its assumptions for golf car use, which are derived from manufacturer input. As it did for two-way radios, DOE divided the golf car application into two distinct applications: golf cars charged in the residential sector, and golf cars charged in the commercial sector. DOE's residential usage profile assumes less time in active use and, therefore, fewer charges per day, while DOE's commercial usage profile assumes heavier use. Given this heavier use, DOE assumed that commercial golf cars spend less time in maintenance mode, as they are typically used more frequently, and for longer durations, than are residential golf cars.

In response to comments from manufacturers that battery chargers in product class 2 that meet the baseline efficiency level may be slow chargers and designed for less frequent use or increased time in maintenance mode, the California IOUs commented that these products may not always be used infrequently, but rather can be used by some segments of the population on a daily basis. (California IOUs, No. 43 at p. 6)

DOE's usage profiles are designed to take into account the average use of all users, subject to the constraints of a given battery charger, such as a slow charge rate or quick discharge rate. DOE believes that it has accurately estimated the usage profiles of handheld vacuum cleaners (which are in no battery mode, on average, six minutes per day), cordless phones (which are in no battery mode, on average, more than two hours per day), and the usage profiles for the remaining applications in its analysis. These usage profiles reflect average use, and, therefore, account for infrequent and frequent users of these applications.

DOE recognizes that there is considerable variation in how individual consumers use battery chargers and EPSs for specific applications. This leads to some uncertainty and disagreement over what an appropriate usage profile is for specific applications, such as power tools, personal care products, and other applications. In all cases, DOE used the best available data to derive reference case usage profiles for each application. For applications with highly variable use, DOE explored high- and low-use scenarios in an LCC sensitivity analysis. DOE continues to seek data and substantiated recommendations that will allow it to further refine its reference case usage profiles. (See Issue 12 under ''Issues on Which DOE Seeks Comment'' in section VII.E of this notice.)

Chapter 7 of the TSD provides additional detail on the energy use analysis.

F. Life-Cycle Cost and Payback Period Analyses

This section describes the LCC and payback period analyses and the spreadsheet model DOE used for analyzing the economic impacts of possible standards on individual consumers. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 and appendix 8A of the TSD. DOE conducted the LCC and PBP analyses using a spreadsheet model developed in Microsoft Excel. When combined with Crystal Ball (a commercially-available software program), the LCC and PBP model generates a Monte Carlo simulation [39] to perform the analysis by incorporating uncertainty and variability considerations.

The LCC analysis estimates the impact of a standard on consumers by calculating the net cost of a battery charger or EPS under a base-case scenario (in which no new energy conservation standard is in effect) and under a standards-case scenario (in which the proposed energy conservation standard is applied). The base-case scenario is determined by the efficiency level that a sampled consumer currently purchases, which may be above the baseline efficiency level. The life-cycle cost of a particular battery charger or EPS is composed of the total installed cost (which includes manufacturer selling price, distribution chain markups, sales taxes, and any installation cost), operating expenses (energy and any maintenance costs), product lifetime, and discount rate. As noted in the preliminary analysis, DOE considers installation costs to be zero for battery chargers and EPSs.

[39] Monte Carlo simulations model uncertainty by utilizing probability distributions instead of single values for certain inputs and variables.

The payback period is the change in purchase expense due to a more stringent energy conservation standard, divided by the change in annual operating cost that results from the standard. Stated more simply, the payback period is the time period it takes to recoup the increased purchase cost of a more-efficient product through energy savings. DOE expresses this period in years.

Table IV–26 summarizes the approach and data that DOE used to derive the inputs to the LCC and PBP calculations for the preliminary analysis and the changes made for today's proposed rule. The following sections discuss these inputs and comments DOE received regarding its presentation of the LCC and PBP analyses in the preliminary analysis, as well as DOE's responses thereto.

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Table IV-26 Summary of Inputs and Key Assumptions Used in the Preliminary Analysis and NOPR LCC Analyses

Inputs	September 2010 Preliminary Analysis	Changes for the Proposed Rule
Manufacturer Selling Price	Derived from the Engineering Analysis through manufacturer interviews (battery chargers and EPSs) and test/teardown results (battery chargers only).	Used same methodology, but conducted additional test/teardowns and interviews.
Markups	Considered various distribution channel pathways for different applications. Applied a reduced "incremental" markup to the portion of the product price exceeding the baseline price.	Used same methodology with additional data sources. See chapter 6 of the TSD for details.
Sales Tax	Derived weighted-average tax values for each Census division and large State from data provided by the Sales Tax Clearinghouse.[1]	Updated the sales tax using the latest information from the Sales Tax Clearinghouse.[2]
Installation Cost	Assumed to be zero.	No change.
Maintenance Cost	Assumed to be zero.	Included the cost of repurchasing a battery that fails within the application lifetime. Accounted for the incremental cost of a lithium ion battery over a nickel chemistry battery, only for CSL 2 or higher.
Unit Energy Consumption	Determined for each application based on estimated loading points and usage profiles (for EPSs), and battery characteristics and usage profiles (for battery chargers).	Used same methodology with additional data sources. See chapter 7 of the TSD for details.
Electricity Prices	Price: Based on EIA's 2008 Form EIA-861 data.[3] Variability: Regional energy prices determined for 13 regions.	Price: No change. The 2008 Form EIA-861 is the most current source available. DOE also considered subgroup analyses using electricity prices for low-income consumers and top tier marginal price consumers. Variability: No change.
Electricity Price Trends	Forecasted with EIA's Annual Energy Outlook Early Release 2010.[4]	Updated with EIA's Annual Energy Outlook 2010.[5]
Lifetime	Determined for each application based on multiple data sources.	Used same methodology with additional data sources. See chapter 3 of the TSD for details.
Discount Rate	Residential: Approach based on the finance cost of raising funds to purchase and operate battery chargers or EPSs either through the financial cost of any debt incurred (based on the Federal Reserve's Survey of Consumer Finances data[6] for 1989, 1992, 1995, 1998, 2001, 2004, and 2007) or the opportunity cost of any equity used. Time-series data was based on arithmetic means from 1979-2009. Commercial: Derived discount rates using the cost of capital of publicly-traded firms based on data from Damodaran Online,[7] the Value Line Investment survey,[8] and the Office of	Residential: DOE updated the calculations to consider the geometric means for all time-series data from 1980-2009. Commercial: DOE updated the risk-free rate to use a 40-year average return on 10-year treasury notes, as reported by the U.S. Federal Reserve.[10] DOE updated the equity risk premium to use the geometric average return on the S&P 500 over a 40-year time period.

	Management and Budget (OMB) Circular No. A-94.[9]	
Sectors Analyzed	All reference case results used the residential sector inputs. Commercial sector results were presented in Appendix 8B as a sensitivity analysis.	All reference case results represent a weighted average of the residential and commercial sectors.
Base Case Market Efficiency Distribution	All market efficiency distributions were constant across representative units and product classes. Distributions were derived from test results.	Where possible, DOE derived market efficiency distributions for specific applications within a representative unit or product class.

[1] The four large States are New York, California, Texas, and Florida.
[2] Sales Tax Clearinghouse, Aggregate State Tax Rates. Available at: https://thestc.com/STRates.stm.
[3] U.S. Department of Energy. Energy Information Administration. Form EIA-861 Final Data File for 2008. November, 2010. Washington, D.C. Available at: http://www.eia.doe.gov/cneaf/electricity/page/eia861.html.
[4] U.S. Department of Energy. Energy Information Administration. Annual Energy Outlook 2010 Early Release. March, 2010. Washington, D.C. Available at: http://www.eia.doe.gov/oiaf/aeo/.
[5] U.S. Department of Energy. Energy Information Administration. Annual Energy Outlook 2010. November, 2010. Washington, D.C. Available at: http://www.eia.doe.gov/oiaf/aeo/.
[6] The Federal Reserve Board, Survey of Consumer Finances 1989, 1992, 1995, 1998, 2001, 2004, 2007. Available at: http://www.federalreserve.gov/pubs/oss/oss2/scfindex.html.
[7] Damodaran Online Data Page, Historical Returns on Stocks, Bonds and Bills-United States, 2010. Damodaran. Available at: http://pages.stern.nyu.edu/~adamodar.
[8] Value Line. Value Line Investment Survey. 2010. Available at: http://www.valueline.com.
[9] U.S. Office of Management and Budget. Circular No. A-94. Appendix C. 2009. Available at: http://www.whitehouse.gov/omb/circulars_a094_a94_appx-c/.
[10] The Federal Reserve Board, Federal Reserve Statistical Release, Selected Interest Rates, Historical Data, Instrument: Treasury Constant Maturities, Maturity: 10-year, Frequency: Annual, Description: Market yield on U.S. Treasury securities at 10-year constant maturity, quoted on investment basis. Available at: http://www.federalreserve.gov/releases/H15/data.htm.

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1. Manufacturer Selling Price

As in the preliminary analysis, DOE used a combination of test and teardown results and manufacturer interview results to develop manufacturer selling prices. DOE conducted tests and teardowns on a large number of additional units and applications for the NOPR, and incorporated these findings into the MSP. Further detail on the MSPs can be found in chapter 5 of the TSD.

Examination of historical price data for a number of appliances that have been subject to energy conservation standards indicates that an assumption of constant real prices and costs may overestimate long-term trends in appliance prices. Economic literature and historical data suggest that the real costs of these products may in fact trend downward over time according to ''learning'' or ''experience'' curves. On February 22, 2011, DOE published a Notice of Data Availability (NODA, 76 FR 9696) stating that DOE may consider improving regulatory analysis by addressing equipment price trends. In the NODA, DOE proposed that when sufficiently long-term data are available on the cost or price trends for a given product, it would analyze the available data to forecast future trends.

To forecast a price trend for the NOPR, DOE considered the experience curve approach, in which an experience rate parameter is derived using two historical data series on price and cumulative production, but in the absence of historical shipments of battery chargers and EPSs and of sufficient historical Producer Price Index (PPI) data for small electrical appliance manufacturing from the Bureau of Labor Statistics' (BLS),[40] DOE could not use this approach. This situation is partially due to the nature of EPS and battery charger design. EPSs and battery chargers are made up of many electrical components whose size, cost, and performance rapidly change, which leads to relatively short design lifetimes. DOE also considered performing an exponential fit on the deflated AEO's Projected Price Indexes that most narrowly include battery chargers and EPSs. However, DOE believes that these indexes are sufficiently broad that they may not accurately capture the trend for battery chargers and EPSs. Furthermore, battery chargers and EPSs are not typical consumer products; they are more like a commodity that OEMs purchase.

Given the uncertainty, DOE is not incorporating product price changes into today's NOPR. For the NIA, DOE also analyzed the sensitivity of results to three alternative battery chargers and EPSs price forecasts. Appendix 10–B of the NOPR TSD describes the derivation of alternative price forecasts.

DOE requests comments on the most appropriate trend to use for real battery charger and EPS prices, both in the short run (to 2013) and the long run (2013–2042).

2. Markups

DOE applies a series of markups to the MSP to account for the various distribution chain markups applied to the analyzed product. These markups are evaluated for each application individually, depending on its path to market. Additionally, DOE splits its markups into ''baseline'' and ''incremental'' markups. The baseline markup is applied to the entire MSP of the baseline product. The incremental markups are then applied to the marginal increase in MSP over the baseline's MSP. Further detail on the

[40] Series ID PCU33521–33521; *http://www.bls.gov/ppi/.*

markups can be found in chapter 6 of the TSD.

3. Sales Tax

As in the preliminary analysis, DOE obtained State and local sales tax data from the Sales Tax Clearinghouse. The data represented weighted averages that include county and city rates. DOE used the data to compute population-weighted average tax values for each Census division and four large States (New York, California, Texas, and Florida). For the NOPR, DOE retained this methodology and used updated sales tax data from the Sales Tax Clearinghouse.[41] The U.S. Census Bureau population estimates used in the preliminary analysis are the most current data available.[42]

4. Installation Cost

As detailed in the preliminary analysis, DOE considered installation costs to be zero for battery chargers and EPSs because installation would typically entail a consumer simply unpacking the battery charger or EPS from the box in which it was sold and connecting the device to mains power and its associated product or battery. Because the cost of this ''installation'' (which may be considered temporary, as intermittently used devices might be unplugged for storage) is not quantifiable in dollar terms, DOE considered the installation cost to be zero.

5. Maintenance Cost

In the preliminary analysis, DOE did not consider repair or maintenance costs for battery chargers or EPSs. In making this decision, DOE recognized that the service life of a battery charger or EPS typically exceeds that of the consumer product with which it is designed to operate. Thus, a consumer would not incur repair or maintenance costs for a battery charger or EPS. Also, if a battery charger or EPS failed, DOE expects that consumers would typically discard the battery charger or EPS and purchase a replacement. DOE received no comments challenging this assumption and has continued relying on this assumption for purposes of calculating the NOPR's potential costs and benefits.

Although DOE did not assume any repair or maintenance costs would apply generally to battery chargers or EPSs, DOE has considered including a maintenance cost for the replacement of lithium ion batteries in certain battery charger applications. Through conversations with manufacturers, DOE learned that such batteries would need replacing within the service life of the battery charger for certain applications based on the battery lifetime and the usage profile assigned to the application. Lithium ion batteries are marginally more expensive than batteries with nickel chemistries (e.g. nickel metal-hydride or ''Ni-MH''), as explained in chapter 5 of the TSD. DOE accounted for this marginal cost increase in these applications at CSLs that use lithium batteries. This maintenance cost only applied to applications where DOE believed the lifetime of the application would surpass the lifetime of the battery. DOE estimated the battery lifetime based on the total number of charges the battery could handle divided by the number of charges per year projected for the application. DOE relied on data provided by manufacturers to estimate the total number of charges the battery could undergo before expiring. Further detail on maintenance costs can be found in chapter 8 of the TSD.

6. Product Price Forecast

As noted in section IV.F., to derive its central estimates DOE assumed no change in battery charger and EPS prices over the 2013–2042 period. In addition, DOE conducted a sensitivity analysis using three alternative price trends based on AEO indexes. These price trends, and the NPV results from the associated sensitivity cases, are described in appendix 10–B of the NOPR TSD.

7. Unit Energy Consumption

The NOPR analysis uses the same approach for determining UECs as the one used in the preliminary analysis. The UEC was determined for each application based on estimated loading points and usage profiles (for EPSs), and battery characteristics and usage profiles (for battery chargers). DOE refined the usage profiles, battery characteristics, and usage profiles for the NOPR. Further detail on the UEC calculations can be found in chapter 7 of the TSD.

8. Electricity Prices

DOE determined energy prices by deriving regional average prices for 13 geographic areas consisting of the nine U.S. Census divisions, with four large states (New York, Florida, Texas, and California) treated separately. The derivation of prices was based on data in EIA's Form EIA–861.

In its written comments, NEEP stated that the high electricity prices in the Northeast region of the United States would likely make the LCC and PBP results more attractive for customers in this region. (NEEP, No. 49 at p. 2) Typically, higher energy costs increase a consumer's operating cost savings. As in the preliminary analysis, DOE sampled a regional electricity price for each trial of the Monte Carlo simulation. Additionally, the electricity price for the Northeast region used by DOE's analysis is greater than the national average. DOE estimates a residential electricity price of $0.166/kWh for the New England region and $0.181/kWh for the state of New York, which exceeds the national average of $0.112/kWh. Further detail on regional electricity price sampling is available in chapter 8 of the TSD.

9. Electricity Price Trends

To project electricity prices to the end of the product lifetime in the preliminary analysis, DOE used data from EIA's *Annual Energy Outlook (AEO) 2010 Early Release*.[43] This data source only contained a reference case scenario, which required DOE to separately project the high- and low-economic-growth scenarios using the relationship between the scenarios in the AEO 2009 data.[44] For the NOPR, DOE used the final release of the AEO 2010,[45] which contained reference, high- and low-economic-growth scenarios.

10. Lifetime

DOE considers the lifetime of a battery charger or EPS to be from the moment it is purchased for end-use up until the time when it is permanently retired from service. Because the typical battery charger or EPS is purchased for use with a single associated application, DOE assumed that it will remain in service for as long as the application does. Even though many of the technology options to improve battery charger and EPS efficiencies may result in an increased useful life for the battery charger or EPS, the lifetime of the battery charger or EPS is still directly tied to the lifetime of its associated application. With the exception of EPSs for mobile phones and smartphones (see

[41] Sales Tax Clearinghouse, Aggregate State Tax Rates. *https://thestc.com/STRates.stm.*

[42] The U.S. Census Bureau. Annual Estimates of the Population for the United States, Regions, States, and Puerto Rico: April 1, 2000 to July 1, 2009. *http://www.census.gov/popest/states/tables/NST–EST2009–01.xls.*

[43] U.S. Department of Energy. Energy Information Administration. Annual Energy Outlook 2010 Early Release. March, 2010. Washington, DC. Available at: *http://www.eia.doe.gov/oiaf/aeo/.*

[44] U.S. Department of Energy. Energy Information Administration. Annual Energy Outlook 2009 with Projections to 2030. March, 2009. Washington, DC. Available at: *http://www.eia.doe.gov/oiaf/aeo/.*

[45] U.S. Department of Energy. Energy Information Administration. Annual Energy Outlook 2010. November, 2010. Washington, DC. *http://www.eia.doe.gov/oiaf/aeo/.*

below), the typical consumer will not continue to use an EPS or battery charger once its application has been discarded. For this reason, DOE used the same lifetime estimate for the baseline and standard level designs of each application for the LCC and PBP analyses. Further detail on product lifetimes and how they relate to applications can be found in chapter 3 of the TSD.

The one exception to the rule that EPSs do not exceed the lifetime of their associated end-use products is the lifetime of EPSs for mobile phones and smartphones. While the typical length of a mobile phone contract is 2 years, and thus many phones are replaced and no longer used after 2 years, DOE assumed that the EPSs for these products will remain in use for an average of 4 years. This assumption is based on an expected standardization of the market around micro-USB plug technology, driven largely by the GSMA Universal Charging Solution.[46] To verify that this evolution towards micro-USB plug technology is in fact taking place, DOE examined more than 30 top-selling basic mobile phone and smartphone models offered online by Amazon.com, Sprint, Verizon Wireless, T-Mobile, and AT&T. DOE found that all of the newest smartphone models other than the Apple iPhone use micro-USB plug technology. While some basic mobile phones continue to use mini-USB or other connector technologies, DOE found more than 15 basic mobile phone models that have adopted the micro-USB technology.

If new EPSs are compatible with a wide range of mobile phone and smartphone models, a consumer may continue to use the EPS from their old phone after upgrading to a new phone. Even though it is currently standard practice to receive a new EPS with a phone upgrade, DOE assumes that in the near future consumers will no longer expect manufacturers to include an EPS with each new phone. DOE requests comment from stakeholders on the reasonableness of this assumption. Tables IV–27 and IV–28 show that assuming a lifetime of 2 years (rather than 4 years) for mobile phone and smartphone EPSs results in lower life-cycle cost savings (or greater net costs) for consumers of those products. However, the net effect on Product Class B as a whole is negligible due to the fact that mobile phones and smartphones together comprise only 7 percent of shipments in Product Class B. LCC results for all other applications in Product Class B are shown in chapter 11 of the TSD.

Table IV-27 EPS Life-Cycle Cost Savings with 4-Year Lifteime Assumptions

	Weighted Average LCC Savings for a Standard at the Given CSL [*2010$*]			
	CSL 1	CSL 2	CSL 3	CSL 4
Mobile Phones	0.06	(0.01)	(0.12)	(0.15)
Smartphones	0.05	(0.02)	(0.13)	(0.16)
Product Class B Shipment-Weighted Average	0.18	0.21	0.16	(0.99)

Table 28 EPS Life-Cycle Cost Savings with Alternative (2-year) Lifetime Assumptions

	Weighted Average LCC Savings for a Standard at the Given CSL [*2010$*]			
	CSL 1	CSL 2	CSL 3	CSL 4
Mobile Phones	(0.02)	(0.19)	(0.34)	(0.40)
Smartphones	(0.02)	(0.18)	(0.31)	(0.38)
Product Class B Shipment-Weighted Average	0.18	0.20	0.15	(1.01)

11. Discount Rate

In the preliminary analysis, DOE derived residential discount rates by identifying all possible debt or asset classes that might be used to purchase and operate products, including household assets that might be affected indirectly. DOE estimated the average shares of the various debt and equity classes in the average U.S. household equity and debt portfolios using data from the Survey of Consumer Finances (SCF) from 1989 to 2007. DOE used the mean share of each class across the seven sample years as a basis for estimating the effective financing rate for products. DOE estimated interest or return rates associated with each type of equity and debt using SCF data and other sources. The mean real effective rate across the classes of household debt and equity, weighted by the shares of each class, is 5.6 percent.

For the commercial sector, DOE derived the discount rate from the cost of capital of publicly-traded firms falling in the categories of products that involve the purchase of battery chargers or EPSs. To obtain an average discount rate value for the commercial sector, DOE used the share of each category in total paid employees provided by the U.S. Census Bureau[47] and Federal,[48] State, and local[49] governments. By multiplying the discount rate for each category by its share of paid employees, DOE derived a commercial discount rate of 7.0 percent.

For the NOPR analysis, DOE uses the same methodology employed in the preliminary analysis but has changed the calculations to account for the

[46] The GSMA Universal Charging Solution is an agreement between 17 mobile operators and manufacturers to have the majority of all new mobile phones support a universal charging connector by January 1, 2012. The press release for the agreement can be accessed here: <*http://www.gsma.com/articles/mobile-industry-unites-to-drive-universal-charging-solution-for-mobile-phones/17752/*>.

[47] U.S. Census Bureau. The 2010 Statistical Abstract. Table 607—Employment by Industry. *http://www.census.gov/compendia/statab/2010/tables/10s0607.xls.*

[48] U.S. Census Bureau. The 2010 Statistical Abstract. Table 484—Federal Civilian Employment and Annual Payroll by Branch. *http://www.census.gov/compendia/statab/2010/tables/10s0484.xls.*

[49] U.S. Census Bureau. Government Employment and Payroll. 2008 State and Local Government. *http://www2.census.gov/govs/apes/08stlall.xls.*

geometric means for all time-series data. Additionally, the analysis now includes updates to the risk-free rate to use a 40-year average return on 10-year U.S. Treasury notes, as reported by the U.S. Federal Reserve,[50] and the equity risk premium—which now uses the geometric average return on the S&P 500 over a 40-year time period. The new discount rates are estimated to be 5.1 percent and 7.1 percent in the residential and commercial sectors, respectively. For further details on discount rates, see chapter 8 and appendix 8D of the TSD.

12. Sectors Analyzed

In the preliminary analysis, DOE analyzed battery chargers and EPSs in the residential sector for the reference case scenario and presented commercial sector results in appendix 8B. DOE developed several inputs specifically for the commercial sector, such as energy prices, energy price trends, and discount rates. Other application-specific inputs—e.g. UEC, markups, and market distribution—were not altered between the residential sector and commercial sector analyses.

The NOPR analysis includes an examination of a weighted average of the residential and commercial sectors as the reference case scenario. Additionally, all application inputs are specified as either residential or commercial sector data. Using these inputs, DOE then sampled each application based on its shipment weighting and used the appropriate residential or commercial inputs based on the sector of the sampled application. This approach provides more specificity as to the appropriate input values for each sector, and permits an examination of the LCC results for a given representative unit or product class in total. For further details on sectors analyzed, see chapter 8 of the TSD.

13. Base Case Market Efficiency Distribution

For purposes of conducting the LCC analysis, DOE analyzed candidate standard levels relative to a base case (*i.e.,* a case without new federal energy conservation standards). This analysis required an estimate of the distribution of product efficiencies in the base case (*i.e.,* what consumers would have purchased in 2013 in the absence of new federal standards). Rather than analyzing the impacts of a particular standard level assuming that all consumers will purchase products at the baseline efficiency level, DOE conducted the analysis by taking into account the breadth of product energy efficiencies that consumers are expected to purchase under the base case.

The preliminary analysis contained base case market efficiency distributions for each representative unit or product class. The distributions were based on test results, shipment-weighting of applications, and trends in efficiency that DOE identified. Under this approach, the resulting efficiency distribution could be heavily influenced by one or two very common applications associated with a particular product class or representative unit.

In preparing the NOPR analysis, DOE derived base case market efficiency distributions that are specific to each application where it had sufficient data to do so. This approach helped to ensure that the market distribution for applications with fewer shipments was not disproportionately skewed by the market distribution of the applications with the majority of shipments. For battery chargers, DOE also adjusted its efficiency distributions for pending efficiency regulations in California (for more information please see IV.G.4). As a result, the updated analysis more accurately accounts for LCC and PBP impacts.

14. Compliance Date

The compliance date is the date when a new standard becomes operative, i.e., the date by which battery charger and EPS manufacturers must manufacture products that comply with the standard. DOE's publication of a final rule in this standards rulemaking is scheduled for completion by 2013. EPCA had prescribed that DOE complete a rulemaking to amend the Class A EPS standards by July 2011 and had given manufacturers a two-year lead time to satisfy those standards—i.e., July 2013. (42 U.S.C. 6295(u)(3)(D)(i)(II)(bb). Given the timing in issuing this rule, DOE may choose to retain this prescribed two-year lead time for EPS manufacturers in spite of the compliance date currently provided in EPCA. There are no similar requirements for the compliance date for battery charger and new (non-Class A) EPS standards, but DOE is also targeting a two-year time period between publication and compliance. DOE calculated the LCCs for all consumers as if each would purchase a new product in the year that manufacturers would be required to meet the new standard (2013). However, DOE bases the cost of the equipment on the most recent available data; all dollar values are expressed in 2010$. DOE invites comment on the compliance date it should provide manufacturers in light of the current set of circumstances.

15. Payback Period Inputs

The PBP is the amount of time a consumer needs to recover the assumed additional costs of a more-efficient product through lower operating costs. As in the preliminary analysis, DOE used a ''simple'' PBP for the NOPR, because the PBP does not take into account other changes in operating expenses over time or the time value of money. As inputs to the PBP analysis, DOE used the total installed cost of the product to the consumer for each efficiency level, as well as the first-year annual operating costs for each efficiency level. The calculation requires the same inputs as the LCC, except for energy price trends and discount rates; only energy prices for the year the standard becomes required for compliance (2013 in this case) are needed.

DOE received a single comment addressing its initial PBP analysis. In particular, Philips commented that DOE had underestimated the projected PBP for inductively charged toothbrushes (i.e., battery charger product class 1). (Philips, No. 43 at p. 2) DOE notes that payback periods comprise a metric demonstrating the underlying cost-effectiveness of a standard level. An underestimated PBP could result from an underestimated incremental consumer purchase price or an overestimated amount of operating cost savings. Philips suggested an alternate usage profile for battery charger product class 1 that included time spent in unplugged mode. (Philips, No. 41 at p. 2) In its view, the use of such an adjusted profile would provide a more accurate picture of the projected savings.

DOE agrees with Philips that battery chargers in product class 1 likely spend some time in unplugged mode and adjusted its usage profile accordingly. The usage profile for these products now includes time in unplugged mode, which resulted in a reduction in operating cost savings. In the NOPR, DOE refined many of its estimates for the inputs contributing to purchase price and operating costs. While DOE is confident in the accuracy of these inputs and the accompanying PBP calculations presented in this NOPR, DOE continues to seek comment to help refine its approach as needed.

[50] The Federal Reserve Board, Federal Reserve Statistical Release, Selected Interest Rates, Historical Data, Instrument: Treasury Constant Maturities, Maturity: 10-year, Frequency: Annual, Description: Market yield on U.S. Treasury securities at 10-year constant maturity, quoted on investment basis. Available at: *http://www.federalfederalreserve.gov/releases/H15/data.htm.*

G. National Impact Analysis

The National Impact Analysis (NIA) assesses the national energy savings (NES) and the net present value (NPV) of total consumer costs and savings that would be expected to result from new or amended standards at specific efficiency levels. (''Consumer'' in this context refers to consumers of the product being regulated.) DOE calculates the NES and NPV based on projections of annual unit shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the NOPR analysis, DOE forecasted the energy savings, operating cost savings, product costs, and NPV of consumer benefits for products sold from 2013 through 2042.

DOE evaluates the impacts of new and amended standards by comparing base-case projections with standards-case projections. The base-case projections characterize energy use and consumer costs for each product class in the absence of new or amended energy conservation standards. DOE compares these projections with projections characterizing the market for each product class if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.,* the TSLs or standards cases) for that class. For the base case forecast, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. For the standards cases, DOE also considers how a given standard would likely affect the market shares of efficiencies greater than the standard.

To make the analysis more accessible and transparent to all interested parties, DOE used an MS Excel spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL. MS Excel is the most widely used spreadsheet calculation tool in the United States and there is general familiarity with its basic features. Thus, DOE's use of MS Excel as the basis for the spreadsheet models provides interested parties with access to the models within a familiar context. The TSD and other documentation that DOE provides during the rulemaking help explain the models and how to use them, and interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses average values as inputs (as opposed to probability distributions).

For the current analysis, the NIA used projections of energy prices from the *AEO2010* Reference case. In addition, DOE analyzed scenarios that used inputs from the *AEO2010* High Economic Growth, Low Economic Growth, and Carbon Cap and Trade cases. These cases have higher or lower energy price trends compared to the Reference case. NIA results based on these cases are presented in appendix 10A to the TSD.

Table IV–29 summarizes the inputs and key assumptions DOE used in its preliminary NIA and the changes to the analysis for the NOPR. Discussion of these inputs and changes follows the table. See chapter 10 of the TSD for further details.

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Table IV-29 Summary of Inputs, Sources and Key Assumptions for the National Impact Analysis

Inputs	Source	Key Assumptions
Base Year Shipments	Market Assessment	[Refer to the Market Assessment]
Shipment Growth Rate	Shipment Analysis	0.75 percent annually, equal to population growth
Lifetimes	Market Assessment	Battery charger and EPS lifetime is equal to the lifetime of the end-use product it powers.
Base Year Efficiencies	Market Assessment	[Refer to the Market Assessment]
Base-Case Forecasted Efficiencies	Shipments Analysis	Efficiency distributions remain unchanged throughout the forecast period
Standards-Case Forecasted Efficiencies	Shipments Analysis	”Roll-up” scenario
Annual Energy Consumption per Unit	Energy Use Analysis	Annual shipment weighted-average marginal energy consumption values for each product class
Improvement Cost per Unit	Engineering Analysis	Annual shipment weighted-average marginal cost values for each product class
Markups	Markups Analysis	[Refer to the Markups Analysis]
Repair and Maintenance Cost per Unit	None	Assumed to be zero
Energy Prices	AEO 2010	Trend extrapolation from 2035 to 2062
Electricity Site-to-Source Conversion Factor	AEO 2010	Conversion factor does not change after 2035
Discount Rate	Office of Management and Budget	Three and seven percent real
Compliance Date of Standard	EISA 2007 for EPSs	Compliance date for battery charger standards matches that specified in the statute for EPS standards (2013)

1. Shipments

Forecasts of product shipments are needed to forecast the impacts standards will have on the Nation. DOE develops shipment forecasts based on an analysis of key market drivers for each considered product. In DOE’s shipments model, shipments of products were calculated based on current shipments of product applications powered by battery chargers or EPSs. The inventory model takes an accounting approach, tracking remaining shipments and the vintage of units in the existing stock for each year of the analysis period.

Stakeholders submitted several comments questioning DOE’s assumption in the preliminary analysis that shipment volumes would not be affected by new or amended standards. AHAM and PTI stated that certain products, such as hair clippers, cordless vacuum cleaners, electric shavers, and DIY power tools, are discretionary purchases for consumers. Because of the discretionary nature of these purchases, AHAM and PTI claimed, standards that cause significant increases in the end-use product’s price may lead some families to forgo purchasing these products and find other means to meet their needs. These parties asked DOE to consider lower shipments in its standards case forecasts. (AHAM, No. 42 at pp. 14–15; PTI, No. 45 at p. 12) In addition, AHAM, CEA, and Cobra Electronics all stated that increases in product price could lead some manufacturers to substitute primary batteries for rechargeable batteries in certain products, *e.g.,* portable navigation devices and portable radios, reducing the number of battery chargers and EPSs for these products. (AHAM, No. 42 at p. 14; CEA, No. 46 at p. 3; Cobra, No. 51 at p. 2) Lastly, Stanley Black & Decker and Lester stated that increases in product price for battery-operated gardening products and golf cars could drive consumers toward their gasoline-powered equivalents. (SBD, No. 44 at p. 2; Lester, No. 50 at p. 3)

In response to these comments, DOE conducted a sensitivity analysis to

examine how increases in end-use product prices resulting from standards might affect shipment volumes. To DOE's knowledge, elasticity estimates are not readily available in existing literature for battery chargers, EPSs, or the end-use consumer products that DOE is analyzing in this rulemaking. Because some applications using battery chargers and EPSs, such as smartphones and videogame consoles, could be considered more discretionary than home appliances, which have an estimated relative price elasticity of −0.34 (See—*http://ees.ead.lbl.gov/bibliography/an_analysis_of_the_price_elasticity_of_demand_for_household_appliances*), DOE believed a higher elasticity of demand was possible. In its sensitivity analysis, DOE assumed a price elasticity of demand of −1, meaning a given percentage increase in the final product price would be accompanied by that same percentage decrease in shipments.

Even under this relatively high assumption for price elasticity of demand, the standards being proposed today are unlikely to have a significant effect on the shipment volumes of those battery charger applications mentioned by stakeholders, with forecasted effects ranging from a decrease of 0.03 percent for electric shavers to a decrease of 1.46 percent for DIY power tools with detachable batteries. Results for all battery charger applications are contained in appendix 9A to the TSD. The corresponding impacts on NES and NPV are included in appendix 10A. DOE did not conduct a similar analysis for EPS applications due to the small size of the price increases (relative to the price of EPS applications) expected to result from the EPS standards being proposed today.

2. Shipment Growth Rate

In the preliminary analysis, DOE noted that the market for battery chargers and EPSs has grown tremendously in the past 10 years. Additionally, DOE found that many market reports have predicted enormous future growth for the applications that employ battery chargers and EPSs. However, in forecasting the size of these markets over the next 32 years, DOE considered the possibility that much of the market growth associated with these products has already occurred. In many reports predicting growth of applications that employ battery chargers or EPSs, DOE noted that growth was predicted for new applications, but older applications were generally not included. That is, the demand for battery chargers and EPSs had not grown, but rather the products that use such devices had transitioned to a new product mix. (See chapter 9 of the Preliminary TSD.)

With this in mind, DOE took a conservative approach in its forecast and estimated that while the specific applications that use battery chargers or EPSs will change, the overall number of individual units that use battery chargers or EPSs will grow slowly, with new applications replacing some current applications, but with little change in per-capita consumption of battery chargers or EPSs over time.

To estimate future market size while assuming no change in the per-capita battery charger and EPS purchase rate, DOE used population growth rate as the compound annual market growth rate. DOE presented this approach to stakeholders for comment and received no comments objecting to its use. Population growth rate values were obtained from the U.S. Census Bureau 2009 National Projections, which forecast population through 2050. DOE took the average annual population growth rate, 0.75 percent, and applied this rate to all battery charger and EPS product classes. For the NOPR analysis, DOE continues to apply this scenario.

3. Product Class Lifetime

For the preliminary analysis, DOE calculated product class lifetime profiles using the percentage of shipments of applications within a given product class, and the lifetimes of those applications. These values were combined to estimate the percentage of units remaining in use for each year following the initial year in which those units were shipped. For the NOPR analysis, DOE continued to apply this scenario.

For more information on the calculation of product class lifetime profiles, see chapter 10 of the TSD.

4. Forecasted Efficiency in the Base Case and Standards Cases

A key component of the NIA is the trend in energy efficiency forecasted for the base case (without new or amended standards) and each of the standards cases. Section IV.A.2 above explains how DOE developed efficiency distributions (which yield shipment-weighted average efficiency) for battery charger and EPS product classes for the first year of the forecast period. To project the trend in efficiency over the entire forecast period, DOE considered recent standards, voluntary programs such as ENERGY STAR, and other trends.

DOE received two comments regarding the effect of European Union (EU) energy efficiency standards on the efficiency of battery chargers and EPSs in the U.S. market. AHAM commented that the EU is planning to begin a series of battery charger efficiency standards in 2011 that could have an effect on some non-wall-adapter battery chargers. (AHAM, No. 42 at p. 15) Similarly, Cobra Electronics commented that the EU's most recent energy efficiency standard for EPSs was established at international efficiency marking protocol level V. (Cobra, No. 51 at p. 3)

In the preliminary analysis, DOE found two programs that would influence EPS efficiency in the short term. The first is the ENERGY STAR program for EPSs (called ''external power adapters''), which specified that EPSs be at or above CSL 1 in order to qualify. This voluntary program was very active, with more than 3,300 qualified products as of May 2010.[51] The second program influencing EPS efficiency is the European Union Ecodesign requirements on Energy Using Products, which includes legislation on EPSs that requires that EPSs sold in the EU be at or above CSL 1, effective April 2011. Europe currently represents approximately one-third of the global EPS market. DOE did not identify any programs that required efficiency above CSL 1. These factors apply to Class A EPSs.

DOE agrees that standards established by the EU will affect the U.S. market, due to the global nature of EPS design, production, and distribution. With these programs in mind, DOE estimated that approximately half of the Class A EPS market at CSL 0 in 2009 would transition to CSL 1 by 2013. In updating its analysis for the NOPR, DOE reviewed these two programs for any changes. DOE found that no new European standards had been announced during the time between the preliminary analysis and the NOPR. However, in regard to the ENERGY STAR program, the U.S. Environmental Protection Agency announced that its program for EPSs would be cancelled effective December 31, 2010.[52] In preparing today's notice, DOE also noted that the European mobile phone industry agreed to adhere to the GSMA Universal Charging Solution, which incorporates a no-load (''standby'') power consumption

[51] EPA, ''ENERGY STAR External Power Supplies AC–DC Product List,'' May 24, 2010 and EPA, ''ENERGY STAR External Power Supplies AC–AC Product List,'' May 24, 2010. Both documents last retrieved on May 28, 2010 from *http://www.energystar.gov/index.cfm?c=ext_power_supplies.power_supplies_consumers.*

[52] EPA, ''ENERGY STAR EPS EUP Sunset Decision Memo,'' July 19, 2010. Last retrieved on July 8, 2011 from *http://www.energystar.gov/ia/partners/prod_development/revisions/downloads/eps_eup_sunset_decision_july2010.pdf.*

requirement that is stricter than both the current Federal standard and ENERGY STAR version 2.0 criteria.

In summary, DOE found no new evidence to support the long-term improvement of EPSs beyond the initial improvement of units as estimated during the preliminary analysis. Thus, DOE has maintained its earlier assumption that EPSs will not improve in efficiency after 2013 in the base case.

For battery charger efficiency trends, DOE considered three key factors: European standards, the EPA's ENERGY STAR program, and the recently approved battery charger standards in California.

The EU included battery chargers in a preparatory study on eco-design requirements that it published in January 2007. However, it has not yet announced plans to regulate battery chargers. Thus, DOE did not adjust the efficiency distributions that it calculated for battery chargers between the present-day and the compliance date in 2013 to account for European standards.

DOE examined the ENERGY STAR voluntary program for battery charging systems and found that as of January 22, 2010, less than 150 battery charging systems had been qualified. As of July 1, 2011, only 241 battery charging systems had been qualified.[53] (Contrast this with the more than 3,300 EPSs that were ENERGY STAR-qualified as of May 2010.) Given the small number of qualified products, DOE also did not adjust its battery charger efficiency distributions to account for any potential market effects of the ENERGY STAR program.

[53] EPA, ''Qualified Product (QP) List for ENERGY STAR Qualified Battery Charging Systems.'' Retrieved on July 8, 2011 from *http://www.energystar.gov/ia/products/prod_lists/BCS_prod_list.xls.*

In the preliminary analysis, DOE found no battery charger standards slated to take effect by 2013. Subsequently, the California Energy Commission (CEC) approved battery charger standards on January 12, 2012 that will take effect on February 1, 2013 for most, if not all, of the battery chargers within the scope of DOE's rulemaking. Hence, DOE adjusted its base case efficiency distributions for battery chargers to account for these standards by assuming that in the absence of Federal standards all battery chargers sold in California would meet the CEC standards. In the absence of market share data, DOE assumed that California's share of the U.S. battery charger market is equivalent to its share of U.S. GDP (13 percent). Table IV–30 contrasts the resultant base case efficiency distributions, used in preparing today's notice, with those used in the preliminary analysis.

Table IV-30 Changes to Base Case Efficiency Distributions to Account for CEC Standards

DOE Product Class	CSL that Best Approximates the CEC Standard	Scenario	Percent of Battery Charger Market at Given CSL Prior to Federal Standards Taking Effect			
			CSL 0	CSL 1	CSL 2	CSL 3
1	0	Ref – Prelim.	77.8%	11.1%	11.1%	0.0%
		Ref. – NOPR	77.8%	11.1%	11.1%	0.0%
		Sensitivity Case	77.8%	11.1%	11.1%	0.0%
2	2	Ref – Prelim.	20.6%	25.7%	50.6%	3.1%
		Ref. – NOPR	17.9%	22.3%	56.6%	3.1%
		Sensitivity Case	0.0%	0.0%	96.9%	3.1%
3	2	Ref – Prelim.	19.5%	71.1%	9.4%	0.0%
		Ref. – NOPR	17.0%	61.8%	21.2%	0.0%
		Sensitivity Case	0.0%	0.0%	100.0%	0.0%
4	2	Ref – Prelim.	10.6%	45.1%	44.3%	0.0%
		Ref. – NOPR	9.2%	39.3%	51.5%	0.0%
		Sensitivity Case	0.0%	0.0%	100.0%	0.0%
5	3	Ref – Prelim.	32.4%	59.5%	8.1%	0.0%
		Ref. – NOPR	28.2%	51.8%	7.0%	13.0%
		Sensitivity Case	0.0%	0.0%	0.0%	100.0%
6	3	Ref – Prelim.	40.9%	33.4%	25.7%	0.0%
		Ref. – NOPR	35.5%	29.1%	22.4%	13.0%
		Sensitivity Case	0.0%	0.0%	0.0%	100.0%
7	1	Ref – Prelim.	50.0%	50.0%	0.0%	0.0%
		Ref. – NOPR	43.5%	56.5%	0.0%	0.0%
		Sensitivity Case	0.0%	100.0%	0.0%	0.0%
8	0	Ref – Prelim.	50.0%	40.0%	10.0%	0.0%
		Ref. – NOPR	50.0%	40.0%	10.0%	0.0%
		Sensitivity Case	50.0%	40.0%	10.0%	0.0%
10a/b	3	Ref – Prelim.	100.0%	0.0%	0.0%	0.0%
		Ref. – NOPR	87.0%	0.0%	0.0%	13.0%
		Sensitivity Case	0.0%	0.0%	0.0%	100.0%

DOE recognizes that the CEC standards may also raise the efficiency of battery chargers sold outside of California. However, the magnitude of this effect cannot be determined. Nevertheless, to explore the full range of possibilities DOE also evaluated the potential impacts of Federal standards under the assumption that the CEC standards become the *de facto* standard for the nation, i.e., all battery chargers sold in the United States just before the Federal standard takes effect in 2013 meet the CEC standards. The base case efficiency distributions assumed in this sensitivity case are shown in Table IV–30. This scenario represents an upper bound on the possible impacts of the CEC standards and a lower bound on the energy savings that could be achieved by Federal standards. In fact, under this scenario, DOE might be limited to setting standards only for product classes 1 and 8, as further improvements to the efficiency of products in the other product classes are not currently projected to be cost-effective. Results of this sensitivity analysis can be found in Appendix 8–B and Appendix 10–A.

DOE believes it is unlikely that all battery chargers sold in the United States will meet the CEC standards by February 1, 2013. First, manufacturers have been given an extremely short transition period of only one year; second, DOE's proposed standards are not as stringent as the CEC standards for product classes 2 through 6, which would potentially reduce the cost of production for these products and make it unlikely that they would be manufactured on a nationwide basis to the higher CEC levels; and third, the CEC standards will be preempted by

Federal standards in the future if DOE finalizes standards for these products, giving manufacturers the option of specifically producing products solely for the California market for an interim period.

DOE seeks comment on its assumptions concerning the impacts of the CEC standards on its base case efficiency distributions. In addition, DOE seeks comment on its assumptions about EPS efficiency, specifically, that EPSs within product classes B (DC output, basic-voltage), C (DC output, low-voltage), D (AC output, basic-voltage) and E (AC output, low-voltage) will improve in efficiency slightly prior to 2013, but then no longer improve in the absence of standards, and that EPSs within product classes X (multiple-voltage) and H (high-power) will not improve in efficiency in the absence of standards. (See issues 10 and 11 under ''Issues on Which DOE Seeks Comment'' in section VII.E of this notice.)

To estimate efficiency trends in the standards cases, DOE has used ''roll-up'' and/or ''shift'' scenarios in its standards rulemakings. Under the ''roll-up'' scenario, DOE assumes: (1) product efficiencies in the base case that do not meet the standard level under consideration would ''roll-up'' to meet the new standard level; and (2) product efficiencies above the standard level under consideration would not be affected. Under the ''shift'' scenario, DOE reorients the distribution above the new minimum energy conservation standard.

In the preliminary analysis, DOE used a roll-up scenario to develop its forecasts of efficiency trends in the standards cases. The NOPR analysis also applies this scenario. For further details about the forecasted efficiency distributions, see chapter 9 of the TSD.

5. Product Price Forecast

As noted in section IV.F., DOE assumed no change in battery charger and EPS pricing over the 2013–2042 period. In addition, DOE conducted sensitivity analysis using three alternative price trends based on AEO indexes. These price trends, and the NPV results from the associated sensitivity cases, are described in appendix 10–B of the NOPR TSD.

6. Unit Energy Consumption and Savings

DOE uses the efficiency distributions for the base case along with the annual unit energy consumption values to estimate shipment-weighted average unit energy consumption under the base and standards cases, which are then compared against one another to yield unit energy savings values for each CSL.

To better evaluate actual energy savings when calculating unit energy consumption for a product class at a given CSL, DOE considered only those units that would actually be at that CSL and did not consider any units already at higher CSLs. That is, the shipment-weighted average unit energy consumption for a CSL ignored any shipments from higher CSLs.

In addition, when calculating unit energy consumption for a product class, DOE used marginal energy consumption, which was taken to be the consumption of a unit above the minimum energy consumption possible for that unit. Marginal unit energy consumption values were calculated by subtracting the unit energy consumption values for the highest considered CSL from the unit energy consumption values at each CSL.

For the NOPR, DOE assumes that energy efficiency would not improve after 2013 in the base case. Therefore, the projected UEC values in the NOPR analysis, as well as the unit energy savings values, do not vary over time. In addition, the analysis assumes that manufacturers would respond to a standard by improving the efficiency of underperforming products but not those that already meet or exceed the standard.

For further details on the calculation of unit energy savings for the NIA, see chapter 10 of the NOPR TSD.

7. Unit Costs

DOE uses the efficiency distributions for the base case along with the unit cost values to estimate shipment-weighted average unit costs under the base and standards cases, which are then compared against one another to give incremental unit cost values for each CSL. In addition, when calculating unit costs for a product class, DOE uses that product class's marginal costs—the costs of a given unit above the minimum costs for that unit.

For further details on the calculation of unit costs for the NIA, see chapter 10 of the NOPR TSD.

8. Repair and Maintenance Cost per Unit

In the preliminary analysis, DOE did not consider repair or maintenance costs for battery chargers or EPSs because the vast majority cannot be repaired and do not require any maintenance. DOE maintains this assumption in its NOPR analysis.

For the NOPR analysis, DOE considered the incremental maintenance cost for the replacement of lithium ion batteries in certain applications. After examining the possible impact of this cost in the life-cycle cost and payback period analyses, DOE determined that the actual impact at the product class level would most likely be negligible. Thus, DOE opted not to retool its NIA model to account for this cost in calculating NPV. For further discussion of this issue, see section IV.F.5 above.

9. Energy Prices

In the preliminary analysis, DOE assumed that all energy consumption and savings would take place in the residential sector, and therefore any energy cost savings would be calculated using residential sector rates.

However, DOE is aware that many products that employ battery chargers and EPSs are located within commercial buildings. Given this fact, the energy cost savings from such products should be calculated using commercial sector rates, which are lower in value than residential sector rates, and would lower the overall financial benefits derived from energy savings in the NPV. In order to account for these products in the NOPR analysis, DOE considered the impacts of battery charger and EPS usage in a commercial setting.

In order to determine the energy usage split between the residential and commercial sector, DOE first separated products into residential and commercial categories. Then, for each product class, using shipment values for 2013, average lifetimes, and base-case unit energy consumption values, DOE calculated the approximate annual energy use split between the two sectors. DOE applied the resulting ratio to the electricity pricing to obtain a sector-weighted energy price. This ratio was held constant throughout the period of analysis.

For further details on the calculation of sector-weighted energy prices for the NIA, see chapter 10 of the NOPR TSD.

10. Site-to-Source Energy Conversion

To estimate the national energy savings expected from appliance standards, DOE uses a multiplicative factor to convert site energy savings (at the home or commercial building) into primary or source energy savings (the energy required to convert and deliver the site energy). These conversion factors account for the energy used at power plants to generate electricity and losses in transmission and distribution, as well as for natural gas losses from pipeline leakage and energy used for pumping. For electricity, the conversion factors vary over time due to projected changes in generation sources (*i.e.,* the

power plant types projected to provide electricity to the country). The factors that DOE developed are marginal values, which represent the response of the system to an incremental decrease in consumption associated with appliance standards.

In the preliminary analysis, DOE used annual site-to-source conversion factors based on reported values in *AEO2010,* which provides energy forecasts through 2035. For 2036–2062, DOE used conversion factors that remain constant at the 2035 values. For the NOPR, DOE continued to use this approach.

Section 1802 of the Energy Policy Act of 2005 (EPACT 2005) directed DOE to contract a study with the National Academy of Science (the Academy) to examine whether the goals of energy conservation standards are best served by measurement of energy consumed, and efficiency improvements, at the actual point-of-use or through the use of the full-fuel-cycle (FFC), beginning at the source of energy production. (Pub. L. No. 109–58). The FFC measure includes point-of-use energy plus the energy consumed in extracting, processing, and transporting primary fuels and the energy losses associated with generation, transmission, and distribution of electricity. The study, ''Review of Site (Point-of-Use) and Full-Fuel-Cycle Measurement Approaches to DOE/EERE Building Appliance Energy-Efficiency Standards,'' was completed in May 2009 and provided five recommendations. A free copy of the study can be downloaded at: *http://www.nap.edu/catalog.php?record_id=12670.*

The Academy's primary recommendation was that ''DOE consider moving over time to use of a FFC measure of energy consumption for assessment of national and environmental impact, especially levels of greenhouse gas emissions, and to providing more comprehensive information to the public through labels and other means, such as an enhanced Web site.'' The Academy further recommended that DOE work with the Federal Trade Commission (FTC) to consider options for making product-specific GHG emissions estimates available to enable consumers to make cross-class product comparisons.

More specifically, the Academy recommended that DOE use the FFC measure of energy consumption for the environmental assessment and national impact analyses used in energy conservation standards rulemakings. The FFC measure would provide more complete information about the total energy use and GHG emissions associated with operating an appliance than the primary energy measure currently used by DOE. Utilizing the FFC measure for environmental assessments and national impact analyses would not require alteration of the measures used to determine the energy efficiency of covered products and covered equipment as existing law still requires such measures to be based solely on the energy consumed at the point-of-use. (42 U.S.C. 6291(4), 6311(4)). However, using the FFC measure in lieu of primary energy in environmental assessments and national impact analyses could affect DOE's consideration of future alternative standard levels.

In response to the NAS committee recommendations, on August 20, 2010, DOE issued a Notice of Proposed Policy proposing to incorporate a FFC analysis into the methods it uses to estimate the likely impacts of energy conservation standards on energy use and greenhouse gas (GHG) emissions, rather than the primary (extended site) energy measures it currently uses. Additionally, DOE proposed to work collaboratively with the FTC to make FFC energy and GHG emissions data available to the public to enable consumers to make cross-class comparisons. On October 7, 2010, DOE held an informal public meeting to discuss and receive comments on its planned approach. The Notice, a transcript of the public meeting and all public comments received by DOE are available at: *http://www.regulations.gov/search/Regs/home.html#docketDetail?R=EERE-2010-BT-NOA-0028.* DOE is developing a final policy statement on these subjects and intends to begin implementing the policy in future energy conservation standards rulemakings.

For further details about the calculation of national energy savings, see chapter 10 of the TSD.

11. Discount Rates

The inputs for determining the NPV of the total costs and benefits experienced by consumers of battery chargers and EPSs are: (1) total increased product cost, (2) total annual savings in operating costs, and (3) a discount factor. For each standards case, DOE calculates net savings each year as total savings in operating costs less total increases in product costs, relative to the base case. DOE calculates operating cost savings over the life of each product shipped from 2013 through 2042.

DOE multiplies the net savings in future years by a discount factor to determine their present value. For the preliminary analysis and today's NOPR, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (OMB) to Federal agencies on the development of regulatory analysis.[54] The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''societal rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

For further details about the calculation of net present value, see chapter 10 of the TSD.

12. Benefits From Effects of Standards on Energy Prices

The reduction in electricity consumption associated with new and amended standards for battery chargers and EPSs could affect overall electricity generation, and thus affect the electricity prices charged to consumers in all sectors of the economy. As a simplifying assumption in the preliminary analysis, DOE assumed no change in electricity prices as a result of energy savings from new or amended standards for battery chargers and EPSs.

Commenting on the preliminary analysis, NEEP stated that the economic benefits of the reduced need for new power plants should be estimated and requested that DOE quantify electricity demand reductions achieved by these updated standards in financial terms. (NEEP, No. 49 at p. 2)

In preparing the NOPR analysis, DOE used NEMS–BT to assess the impacts of the reduced need for new electric power plants and infrastructure projected to result from standards. In NEMS–BT, changes in power generation infrastructure affect utility revenue requirements, which in turn affect electricity prices. From these data, DOE estimated the impact on electricity prices associated with each considered TSL. Although the aggregate benefits for electricity users are potentially large, there may be negative effects on some of the entities involved in electricity supply, particularly power plant providers and fuel suppliers. Because there is uncertainty about the extent to which the benefits for electricity users from reduced electricity prices would be a transfer from entities involved in electricity supply to electricity consumers, DOE tentatively concludes

[54] OMB Circular A–4 (Sept. 17, 2003), section E, ''Identifying and Measuring Benefits and Costs. Available at: *http://www.whitehouse.gov/omb/memoranda/m03-21.html.*

that, at present, it should not give a heavy weight to this factor in its consideration of the economic justification of new or amended standards. DOE is continuing to investigate the extent to which electricity price changes projected to result from standards represent a net gain to society.

For further details about the effect of standards on energy prices, see chapter 10 of the TSD.

H. Consumer Subgroup Analysis

In analyzing the potential impacts of new or amended standards, DOE evaluates the impacts on identifiable subgroups of consumers (*e.g.,* low-income households or small businesses) that may be disproportionately affected by a national standard. In the preliminary analysis, DOE identified four consumer subgroups of interest—low-income consumers, small businesses, top marginal electricity price tier consumers, and consumers of specific applications within a representative unit or product class.

Interested parties supported DOE's decision to analyze consumers of specific applications in the subgroup analysis. AHAM commented that DOE should consider subgroups of applications to ensure that CSLs are justified for applications with different energy usage characteristics from the product class. (AHAM, No. 42 at p. 12) Stanley Black & Decker also commented that outdoor gardening appliances were only operated a portion of the year, and would have different energy usage characteristics from the product class, necessitating a subgroup analysis. (SBD, No. 44 at pp. 1–2) Wahl Clipper commented that infrequently charged products should not be compared in the same fashion as those that are plugged in most of the time. (Wahl, No. 53 at p. 2)

Additionally, manufacturers commented that averaging LCC results of various applications within the representative unit or product class would not lend enough weight to applications with fewer shipments. PTI noted that power tools have little in common with other applications aside from their battery energy and voltage levels. In its view, the averaging of LCC results would diminish the impact of the power tools on the LCC results for the entire product class. (PTI, No. 45 at pp. 6, 13) Similarly, AHAM and PTI commented that certain applications sell at lower price points than other applications within the product class. They argued that averaging the LCC results across these applications would deemphasize the impacts on the individual applications. (AHAM, No. 42 at pp. 13–14; PTI, No. 45 at pp. 6, 13)

DOE's subgroup analysis for consumers of specific applications considered the LCC impacts of each application within a representative unit or product class. This approach allowed DOE to consider the LCC impacts of individual applications when choosing the proposed standard level, regardless of the application's weighting in the calculation of average impacts. The impacts of the standard on the cost of the battery charger or EPS as a percentage of the application's total purchase price are not relevant to DOE's LCC analysis. The LCC considers the incremental cost between different standard levels. DOE used the cost of the EPS or battery charger component in the LCC, not the final price of the application. Therefore, a $2,000 and $20 product are assumed to have the same cost for a battery charger or EPS (e.g., $5) if they are within the same CSL of the same representative unit or product class. The LCC considers the incremental impacts on consumers who purchase the product, but does not account for price elasticity or the economic impacts of consumers switching to non-covered products. Instead, DOE explored these possibilities in a shipments sensitivity analysis, as explained in section IV.G.1 above. The application-specific subgroup analyses represent an estimate of the marginal impacts of standards on consumers of each application within a representative unit or product class.

At the preliminary analysis public meeting, AHAM commented that some applications span multiple battery charger product classes, making it difficult for the LCC to focus on specific applications. (AHAM, Pub. Mtg. Tr., No. 57 at p. 153)

DOE notes that several applications span more than one product class or representative unit. Because each product class has associated characteristics and costs, it is difficult to aggregate LCC results across product classes. Therefore, DOE calculated application-specific results for each product class and representative unit. For applications that span multiple product classes, DOE calculated the LCC and PBP impacts for that application in each product class.

For each subgroup, DOE considered variations on the standard inputs. DOE defined low-income consumers as residential consumers with incomes at or below the poverty line, as defined by the U.S. Census Bureau. DOE found that these consumers face electricity prices that are 0.2 cents per kWh lower, on average, than the prices faced by consumers above the poverty line. For small businesses, DOE analyzed the potential impacts of standards by conducting the analysis with different discount rates, as small businesses do not have the same access to capital as larger businesses. DOE estimated that for businesses purchasing battery chargers or EPSs, small companies have an average discount rate that is 4.5 percent higher than the industry average. For top tier marginal electricity price consumers, DOE researched inclined marginal block rates for the residential and commercial sectors. DOE found that top tier marginal rates for general usage in the residential and commercial sectors were $0.306 and $0.221, respectively. Lastly, for the application-specific subgroup, DOE used the inputs from each application for lifetime, markups, market efficiency distribution, and UEC to calculate LCC and PBP results.

Chapter 11 of the TSD contains further information on the LCC analyses for all subgroups.

I. Manufacturer Impact Analysis

1. Overview

DOE conducted separate manufacturer impact analyses (MIA) for EPSs and battery chargers to estimate the financial impact of new or amended energy conservation standards on these industries. The MIA is both a quantitative and qualitative analysis. The quantitative part of the MIA relies on the Government Regulatory Impact Model (GRIM), an industry cash-flow model customized for EPSs and applications that include battery chargers covered in this rulemaking. The key MIA output is industry net present value, or INPV. DOE used the GRIM to calculate cash flows using standard accounting principles and to compare changes in INPV between a base case and various TSLs (the standards case). The difference in INPV between the base and standards cases represents the financial impact of the new and amended standards on manufacturers. Different sets of assumptions (scenarios) produce different results.

DOE calculated the MIA impacts of new and amended energy conservation standards by creating separate GRIMs for EPS original device manufacturers (ODMs) and battery charger manufacturers. In each GRIM, DOE presents the industry impacts by grouping similarly impacted products. For EPSs DOE presented the industry impacts by grouping the four representative product class B units (with output powers at 2.5, 18, 60, and

120 Watts) to characterize the results for product classes B, C, D, and E. DOE also presented the results for product classes X and H separately. For battery chargers, DOE presented the industry impacts by the major product class groupings for which TSLs are selected (product class 1; product classes 2, 3, and 4; product classes 5 and 6; product class 7; product class 8; product class 10). When appropriate, DOE also presented the results for differentially impacted industries within and across those groupings. This is necessary because a given industry, depending upon how narrowly it is defined, may fall into several product classes. By segmenting the results into these similar industries, DOE is also able to discuss how subgroups of battery charger manufacturers will be impacted by new energy conservation standards.

The complete MIA is presented in chapter 12 of the NOPR TSD.

2. EPS MIA

The MIA for EPSs focused on the original device manufacturers—or ODMs. These companies manufacture the EPS itself, as opposed to the application it is designed for or sold with. DOE analyzed the impact of standards on EPS manufacturers at the ODM level for three basic reasons: (1) The ODM typically certifies compliance with the DOE energy conservation standards and completes most design work for the EPS (even if EPS specifications are given by an OEM); (2) unlike battery chargers, the EPS is not fully integrated into end-use applications; and (3) most of the EPS final assembly and manufacturing is done by ODMs, which then ship the EPS as a component to OEMs. In essence, unlike a battery charger, the EPS typically becomes a final product when under the control of the ODMs, regardless of any additional steps in the distribution chain to the consumer.

a. EPS GRIM Key Inputs

Many of the inputs to the GRIM come from the engineering analysis, the NIA, manufacturer interviews, and other research conducted during the MIA. The major GRIM inputs are described in detail in the sections below.

i. EPS Manufacturer Production Costs

The MIA is concerned with how changes in efficiency impact the manufacturer production costs (MPCs). The MPCs and the corresponding prices for which fully assembled EPSs are sold to OEMs, frequently referred to as ''factory costs'' in the industry, are major factors in industry value calculations. DOE's MPCs include the cost of components (including integrated circuits), other direct materials of the finalized EPS, the labor to assemble all parts, factory overhead, and all other costs borne by the ODM to fully assemble the EPS.

In the engineering analysis, cost-efficiency curves are developed for the four representative product class B units and product classes X and H, which were all analyzed directly. The MPCs are calculated in one of two ways. For the product class B representative units, DOE based its MPCs on information gathered during manufacturer interviews. In these interviews, manufacturers described the costs they would incur to achieve increases in energy efficiency. For product classes H and X, the engineering analysis created a complete bill of materials (BOM) derived from the disassembly of the units selected for teardown.

To calculate the percentage of the MPC attributable to labor, material, and overhead, DOE used the average percentages from all teardowns completed as part of the engineering analysis.

For further detail, see the Engineering Analysis discussion in section IV.C.1 of this NOPR.

ii. EPS Shipment Forecast

Industry value, the key GRIM output, depends on industry revenue, which, in turn, depends on the quantity and prices of EPSs shipped in each year of the analysis period. Industry revenue calculations require forecasts of: (1) Total annual shipment volume; (2) the distribution of shipments across analyzed representative units (because prices vary by representative unit); and, (3) the distribution of shipments across efficiencies (because prices vary with efficiency).

In the NIA, DOE estimated total EPS shipments by application in 2009 and assumed a constant compound annual growth rate for total EPS shipments throughout the analysis period. DOE did not assume a decrease in shipments due to energy conservation standards.

The GRIM requires that shipments be disaggregated by analyzed representative unit. In the LCC, DOE allocated total EPS shipments among all analyzed EPS applications. In the MIA, DOE assigned each application's associated EPS shipments to one of the six representative units in the following manner. First, DOE assigned any EPS application that uses multiple voltages to product class X. Second, any EPS application with an output power greater than 250 Watts was assigned to product class H. Lastly, DOE assigned each unit shipped in product classes B, C, D, and E to one of four groups, corresponding to one of the four representative units (output powers of 2.5, 18, 60, and 120 Watts), whichever has the closest output power. For example, if an application has an output power of 4 Watts, DOE assigned that application to the 2.5W representative unit grouping.

As discussed above, revenue calculations also require knowledge of the efficiency distribution in each year of the analysis period. DOE first developed efficiency distributions for 2009 based on products that DOE tested. Next, DOE estimated a 2013 efficiency distribution based on an assessment of recent trends in product efficiency. DOE then linearly extrapolated the efficiency distributions for the intermediate years between 2009 and 2013. DOE assumed a constant efficiency distribution in the base case throughout the analysis period. See section IV.G of this NOPR for more information about DOE's base-case EPS shipments forecast.

iii. EPS Product and Capital Conversion Costs

DOE expects new and amended energy conservation standards to cause some manufacturers to incur one-time conversion costs to bring their production facilities and product designs into compliance with the new and amended standards. For the MIA, DOE classified these one-time conversion costs into two major groups: (1) product conversion costs and (2) capital conversion costs. Product conversion costs are one-time investments in research, development, testing, marketing, and other non-capitalized costs focused on making product designs comply with the new and amended energy conservation standards. Capital conversion costs are one-time investments in property, plant, and equipment to adapt or change existing production facilities so that new product designs can be fabricated and assembled.

DOE received several comments on the preliminary analysis about the impact of product and capital conversion costs on EPS manufacturers and OEMs. Many commenters expressed concerns about potential conversion costs. AHAM suggested that DOE seek input from manufacturers related to the impact of additional engineering, testing, and capital improvements that are associated with any significant design changes. Specifically, AHAM noted that changes to the outside housing of some battery chargers and EPSs will result in changes to plastic injection molds that cost tens of thousands of dollars each year, as well

as changes in the size of external packaging of the product. (AHAM, No. 42 at p. 11) Similarly, Cobra suggested that incremental engineering design costs be assessed because they may become a significant part of the initial cost of the product. (Cobra, No. 51 at p. 2)

DOE agrees that testing, certification, and engineering costs could represent a substantial cost for the EPS industry. DOE relied on a number of assumptions from other analyses and data gathered from publicly available sources to estimate product conversion costs. The key values used to estimate product conversion costs were application lifetimes, shipments of each application from 2011 and 2013, and typical industry research and development expenses. Because the product lifecycle tends to be shorter for electronics, DOE assumed that in the base case, a portion of the applications will be redesigned between the announcement of an energy conservation standard and the implementation of that energy conservation standard. Those applications that are scheduled for redesign are excluded from the projected product conversion costs.

DOE assumed that an application's product lifetime—the average number of years a product is used by consumers—is equal to its production cycle, the average number of years between when manufacturers redesign that application. DOE based this simplifying assumption on feedback received from several manufacturers during manufacturer interviews. However, DOE is aware that not all product lifetimes directly correspond to their production cycle, as some products may have shorter or longer production cycles compared to their product lifetimes. DOE believes on average the product lifetime is an appropriate estimate of the production cycle for an application. So for example, for an application with a five-year product lifetime, DOE assumed that application to also have a five-year production cycle. Therefore on average one-fifth of these applications would be redesigned each year by manufacturers. Because there is a two-year time period between the announcement of the standard and its compliance date, two-fifths of the applications with a five-year production cycle will be redesigned in that timeframe, irrespective of whether a standard is implemented. As a result, three-fifths of the five-year applications would need to be redesigned as a result of a new or amended energy conservation standard. In addition, only those products that do not meet the established energy conservation standard would be required to be redesigned, as the efficiency of products meeting or exceeding the standard would remain unchanged.

AHAM stated that products that undergo changes must be sent to third-party testing laboratories for energy efficiency testing and these testing costs must be factored into the overall cost of changing a product's design. AHAM suggested that DOE ask manufacturers for information on these costs. AHAM also argued the cost of safety certification should be included in the overall cost. (AHAM, No. 42 at pp. 11) Cobra commented that third-party testing would be an undue burden on manufacturers, stating that DOE should not require it unless a significant compliance problem with the current system is proven. (Cobra, No. 51 at p. 4)

DOE notes that it does not currently require manufacturers to use third-party testing to demonstrate compliance with EPS or battery charger energy conservation standards as the above comments suggest. However, DOE recognizes other organizations that provide certifications for safety or other product attributes may constitute part of the total product conversion costs (such as UL certification). DOE also understands that many ODMs and/or OEMs will likely pay for third-party testing to ensure compliance with the energy conservation standard because many do not have certified labs. DOE included testing costs as part of the research and development costs used to calculate the product conversion cost for the industry because these costs represent a significant portion of existing expenses that are factored into the methodology.

DOE used a similar approach to calculate capital conversion costs, using application lifetimes and the shipments of each application between 2011 and 2013 as the key assumptions. Whereas DOE estimated product conversion costs using a multiple of typical industry R&D expenditures, DOE estimated capital conversion costs using a multiple of typical industry capital expenditures. In response to AHAM's comment regarding the potential changes to the plastic injection molds used to cast the external casings of EPSs, DOE assumed in its analysis that the changes for the actual EPS designs would require a lower capital investment than for battery chargers because these changes would affect only the external housing of an EPS. By comparison, battery chargers may require changes to the entire housing, which would require a greater capital investment.

Cobra also expressed concerns about conversion costs for manufacturers of linear EPSs because, depending on the efficiency level DOE sets, a manufacturer would have to transition from a mechanical assembly process to an automated printed circuit board (PCB) assembly process. (Cobra, No. 51 at p. 3)

The capital cost of transitioning from a mechanical assembly process to an automated PCB assembly process would be borne by the EPS ODM in most cases. For most CSLs, there are a variety of technologies available for EPSs and many ODMs do not exclusively offer linear EPSs. OEMs that do not own their own manufacturing facilities will also be impacted by this transition, but the impact will manifest itself primarily through higher factory costs after standards apply. DOE fully analyzed these costs in the engineering costs and the GRIM's INPV calculations. In particular, the capital conversion cost assumptions that DOE used increase at CSLs that require a technology change because, as Cobra states, these transitions greatly increase the required capital and product conversion costs, especially for manufacturers that must transition to a new assembly process. This factor is taken into account for the 2.5W representative unit. DOE assumed the product and capital conversion costs associated with upgrading CSL 1 and baseline 2.5W representative units would be greater than the product and capital conversion costs of other representative units because the technology employed in upgrading those 2.5W representative units change from linear to switch mode technology. This technology change would be more costly than an ordinary product redesign because companies focusing on incremental changes for applications using linear technology may not have the experience and expertise to implement switch mode technology in their applications without additional product development efforts.

See chapter 12 of the TSD for a complete description of DOE's assumptions for the capital and product conversion costs.

iv. Financial Inputs

DOE was unable to locate sufficient data on publicly-traded EPS manufacturers because few, if any, major EPS ODMs are publicly traded in the United States. Consequently, few, if any, of these companies file annual 10–K reports with the Securities and Exchange Commission. Because these documents were not available, the preliminary MIA DOE developed began with the basic financial parameters used in the ballast rulemaking (such as R&D percentage of revenue, capital expenditure percentage of revenue,

SG&A percentage of revenue, tax rate as a percentage of revenue, etc.) because many of the companies included in that analysis were structured similarly to EPS manufacturers, manufacture products in similar locations, and use similar production processes [76 FR 20090, 20134–20135 April 11, 2011 (notice of proposed rulemaking to set amended efficiency standards for fluorescent lamp ballasts, describing various aspects of the manufacturing industry) and section 4.3 of chapter 13 of the NOPR TSD accompanying that notice]. During manufacturer interviews, DOE asked EPS manufacturers to comment on these initial financial parameters. Several EPS manufacturers interviewed confirmed that these initial financial parameters were an appropriate representation of the EPS industry. Consequently, DOE applied these parameters in analyzing the EPS industry in the MIA.

v. EPS Standards-Case Shipments

The base-case efficiency distribution and growth rate drive total industry revenue in the base case. In the standards case, DOE assumed that manufacturers will respond to new and amended standards by improving only those products that do not meet the standards in 2013, but not exceed, the new and amended standard level. Products that already meet or exceed the proposed level remain unaffected. This is referred to as a ''roll-up'' scenario. See chapter 9 of the TSD for a complete explanation of the efficiency distribution of EPSs and battery chargers by product class.

vi. EPS Markup Scenarios

As discussed above, the MPCs of the six representative units are the factory costs of the ODM and include direct labor, material, overhead, and depreciation. The MSP is the price the ODM sells an EPS to an OEM. The MSP is equal to the MPC multiplied by the manufacturer markup. The manufacturer markup covers all the ODM's non-production costs (i.e., SG&A, R&D, and interest, etc.) and profit. Total EPS revenue is equal to the MSPs at each CSL multiplied by the shipments at that CSL.

Modifying these manufacturer markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case markup scenarios to represent the uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of new and amended energy conservation standards: (1) A flat markup scenario and (2) a preservation of operating profit scenario. These scenarios lead to different markups values, which, when applied to the inputted MPCs, result in varying revenue and cash flow impacts.

The flat markup scenario assumed that the cost of goods sold for each product is marked up by a flat percentage to cover SG&A expenses, R&D expenses, and profit. This scenario represents the upper bound of industry profitability in the standards case because manufacturers are able to fully pass through additional costs due to standards to their customers.

DOE also modeled a lower-bound profitability scenario. During interviews, ODMs and OEMs indicated that the electronics industry is extremely price sensitive throughout the distribution chain. Because of the highly competitive market, this scenario models the case in which ODMs' higher production costs for more efficient EPSs cannot be fully passed through to OEMs. In this scenario, the manufacturer markups are lowered such that manufacturers are only able to maintain the base-case total operating profit in absolute dollars in the standards case, despite higher product costs and required investment. DOE implemented this scenario in the GRIM by lowering the manufacturer markups at each TSL to yield approximately the same earnings before interest and taxes in both the base case and standards cases in the year after the compliance date for the new and amended standards. This scenario represents the lower bound of industry profitability following new and amended energy conservation standards because higher production costs and the investments required to comply with the new and amended energy conservation standard do not yield additional operating profit.

b. Comments From Interested Parties Related to EPSs

DOE also received comments on the potential manufacturer impacts that would result from DOE's treatment of EPSs as both a stand-alone product and a component of another regulated product (the battery charger). AHAM stated that this treatment could lead to duplicative testing if this rulemaking were to establish different compliance dates for EPSs and battery chargers, or if future standards were to be updated at different points for battery charger and EPSs. (AHAM No. 44 at p. 11)

In response, DOE notes that EPS and battery charger standards for this rulemaking will go into effect on the same date. Therefore, DOE does not foresee a situation in which updated regulations would occur at different intervals.

To account for the compliance costs for certifying an EPS alone and as a component of a battery charging system, DOE has included compliance costs for both the EPS and the battery charging system in its conversion cost estimates in the EPS GRIM and the battery charger GRIM, respectively. DOE also notes for product class N EPSs, which only function as a battery charger component (as opposed to EPSs that can directly power the application), the Class A EPS standards prescribed in 42 U.S.C. 6295(u)(3) will continue to apply to the Class A EPSs in product class N. Any additional energy-related savings generated by the use of more efficient product class N EPSs will be captured through the battery charger standards that DOE is proposing to set. Consequently, conversion costs for product class N EPSs are not included in the EPS analysis, but the conversion costs for the battery charging portion of the application are included in the battery charger GRIM for these applications. DOE believes that this approach will help to ensure that additional energy savings can be obtained by applying more stringent levels in a manner that reduces the complexity of the overall standards that are set. Depending on the additional information that DOE receives in response to this proposed approach, the agency may alter the approach to account for that additional information.

In response to the preliminary analysis, Cobra suggested that DOE account for incremental engineering design costs in the rulemaking analysis, as those costs may comprise a significant portion of the product's initial cost. DOE notes that the incremental engineering costs are directly accounted for in the MPCs which are a central input to the GRIM.

Cobra also questioned what it viewed as a DOE assumption that achieving a new or amended standard can be done with present staffing and within the two years between the notice and the compliance date. Cobra stated that while this may be possible if the standard is set close to today's standards, it will not continue to be the case if the standard is set closer to the max tech level. Cobra stated that achieving a new or amended standard will take even longer if DOE regulates products under an EPS and battery charger regulation at the same time due to additional design burdens. (Cobra, No. 51 at p. 2)

Partly in recognition of this situation, DOE is not proposing new or amended standards for product class N EPSs in

today's notice. This approach allows manufacturers to focus on improving the efficiency of these products as a system. As shown by DOE's capital and product conversion costs that increase at each higher efficiency level, DOE also agrees that standards that are closer to max-tech would require a more substantial research and development effort by manufacturers and are accounted for in DOE's analysis. However, DOE does not assume that standards set closer to the max tech level could be met by all manufacturers with their present staffing. In addition to standard research and development expenses that account for ongoing product development, DOE's methodology accounts for the additional product conversion costs that would be required for products that fall below the required efficiency level or would not have been redesigned in the period between the final rule's issuance and the compliance date of the standard. The EPS conversion cost estimates also account for any additional engineering or product development resources necessary to meet new or amended energy conservation standards.

c. High-Power EPS Manufacturer Interviews

To better understand the possible impacts on product class H, DOE attempted to gather more information about the possible impacts on high-power EPS ODMs. DOE identified a total of 13 manufacturers of high-power EPSs. DOE attempted to contact all manufacturers of high-power EPSs. DOE managed to locate contact information for eleven of these manufacturers and contacted each to schedule interviews. Six of these eleven were domestic manufacturers and five were foreign manufacturers. Of these eleven manufacturers for whom DOE found contact information, five were non-responsive. The remaining six declined to discuss the impacts of new standards on high-power EPSs. Four of the six manufacturers that declined to be interviewed were domestic manufacturers and two were foreign manufacturers.

3. Battery Charger MIA

In the battery charger MIA, DOE analyzed the impacts of standards on manufacturers of the applications that incorporate the covered battery chargers (the application OEMs). DOE believes this MIA focus, which differs from the approach DOE is using for the EPS MIA, is appropriate for several reasons.

First, the application OEM will be the party most directly financially impacted by any energy conservation standards, as evidenced by their participation in the rulemaking process. Battery chargers are almost always integrated into and/or sold with the final application—meaning the severity of necessary conversion costs and the financial impact of higher battery charger costs can only be assessed meaningfully at the application level. Because most battery chargers are sold with, or fully integrated into, the end-use application, OEMs will pay for any costs required to alter the application if the new battery charger design requires it. These costs will vary from application to application, even within a product class.

Second, the battery charger value chain varies greatly and is principally dictated by the application for which it is designed and with which it is sold. While EPSs are almost exclusively sold as finalized components, battery charger manufacturing is split between companies that produce battery chargers for OEMs and OEMs that produce battery chargers ''in house.''

Third, the OEM typically designs the battery charger and would certify compliance with any DOE regulations because it is often impossible to separate the battery charger from the application.

Fourth, even if the OEM does not design the battery charger, it typically will still integrate it into the final product. As a result, even if an OEM did not design the battery charger, it must still integrate it into the final application. Therefore, the OEM will be responsible for any changes to the application (such as the plastic housing) which are necessary due to the changes in the battery charger.

Lastly, within a given product class, individual applications may be much more severely impacted than others within the same product class—even at the same CSL. These differential impacts would be obscured if DOE did not consider the different characteristics of the application industries.

In some industries, particularly those that utilize high-energy battery chargers, the directly impacted party will likely be the battery charger ODM (as opposed to the OEM). Manufacturers of battery chargers for golf cars, for example, produce and sell stand alone battery chargers and would be responsible for compliance with energy conservation standards and all associated conversion costs. DOE conducted a subgroup analysis for product class 7, which it presents in the regulatory flexibility analysis, section VI.B. That analysis addresses the potential impacts of the proposed standards on small businesses. DOE is following this approach because the only manufacturers of these products that DOE identified are small businesses.

To calculate impacts on the application OEM, DOE analyzed the industries of the applications that use covered battery chargers. DOE presents results in two different ways. First, DOE presents the industry impacts by the major product class groupings for which TSLs are derived (product class 1; product classes 2, 3, and 4; product classes 5 and 6; product class 7; product class 8; product class 10).

Second, DOE used an alternative construction for evaluating the MIA results for battery chargers. DOE has developed this approach because if it grouped results in the same manner as the TSL product class groupings noted above, they would not adequately account for the fact that many applications within the same product class groupings are very dissimilar. The aggregate projected impacts would not necessarily be representative of each particular industry within each product class grouping. To address this potential problem, the analysis (particularly for product classes 2, 3, and 4) groups applications into four industry subcategories. These industry subgroups share similar characteristics and the proposed standards are projected to affect these industry subgroups similarly. To group the applications, DOE assigned each application to one of four distinct industry subgroups: small appliances, consumer electronics, power tools, and high-energy products (''high-energy'' products are those applications that fit into product classes 5, 6, and 7). This additional approach enhances the interpretability and transparency of the MIA results by providing a meaningful way to compare impacts across applications.

DOE has set up a flexible methodology that allows the analysis of individual applications or a set of applications. DOE reports these quantitative MIA results for each individual application, product class, and industry subgroup in chapter 12 of the TSD.

a. Battery Charger GRIM Key Inputs

Many of the inputs to the GRIM come from the engineering analysis, the NIA, manufacturer interviews, and other research conducted in preparing the MIA. The major GRIM inputs are described in detail in the sections below.

i. Battery Charger Manufacturer Production Costs and Application Prices

Calculating manufacturer impacts at the OEM level for battery chargers

requires two critical inputs: First, the price that the application OEM charges for its finished product (to calculate revenue); and, second, the portion of that price represented by its battery charger (to calculate costs) at each CSL.

For the first component, DOE determined representative retail prices for each application by surveying popular online retailer Web sites to sample a number of price points of the most commonly sold products for each application. The price of each application can vary greatly depending on many factors (such as the features of each individual product). For each application, DOE used the average application price found in the product survey. DOE then discounted this representative retail price back to the application MSP using the retail markups derived from annual SEC 10–K reports in the Markups Analysis, as discussed in section IV.F.

DOE calculated the second figure—the price of the battery charger itself at each CSL—in the engineering analysis. The engineering analysis calculated a separate cost efficiency curve for each of the 10 battery charger product classes. Based on product testing data, tear-down data and manufacturer feedback, DOE created a BOM at the ODM level to which markups were applied to calculate the MSP of the battery charger at each CSL. DOE then allocated the battery charger MSPs of each product class to all the applications within each product class. In this way, DOE arrived at the cost to the application OEM of the battery charger for each application.

ii. Battery Charger Financial Parameters

Because any two application OEMs may compete in very different markets, a single set of financial parameters cannot adequately characterize each manufacturer's cost structure. To address this limitation, DOE gathered and disaggregated publicly available financial data for representative manufacturers in each of the four industry categories it analyzes: Small appliance manufacturers, consumer electronics manufacturers, power tool manufacturers, and high-energy product manufacturers. DOE then assigned each application to one of the four industry subgroups. In the GRIM, each individual application uses the cost structure of the industry subgroup to which it belongs.

iii. Battery Charger Shipment Forecast

As with EPS shipments, DOE estimated total domestic shipments of each analyzed application for 2013 that is sold with a battery charger. DOE then distributed the associated shipments among the 10 product classes and among the four industry subgroups. See chapter 12 of the TSD for a complete list of the applications DOE included in each of the four industry subgroups. DOE also adjusted its efficiency distributions and shipments in the base case, to account for pending efficiency regulations in California (for more information please see IV.A.2.d). In the GRIM, DOE used the battery charger shipment projections from 2009 to 2042 that were generated in the NIA.

iv. Battery Charger Product and Capital Conversion Costs

Capital and product conversion costs triggered by a new energy conservation standard are critical inputs to the GRIM. DOE received various comments about the impact of product and capital conversion costs on manufacturers of applications that incorporate covered battery chargers.

AHAM suggested that DOE seek manufacturer input regarding the impact of additional engineering, testing, and capital improvements that are associated with any significant design changes that would be needed to satisfy new standards for battery chargers. Specifically, AHAM noted that changes to the outside housing of some battery chargers will result in changes to plastic injection molds that cost tens of thousands of dollars each year, as well as changes in the size of the external packaging of the product. (AHAM, No. 42 at p. 11) PTI stated that manufacturers will encounter redesigning, retooling and re-qualifying costs for battery chargers used in power tools. The magnitude of these costs will depend on the final CSL selected. For example, the difference between CSL 1 and CSL 2 for product class 4 could be hundreds of thousands of dollars. (PTI, No. 45 at p. 13) Similarly, Cobra argued that incremental engineering design costs should be included in the analysis because they may become a significant part of the initial cost of the product. (Cobra, No. 51 at p. 2)

DOE agrees that testing and engineering costs could represent a substantial cost burden to manufacturers, depending on the efficiency levels eventually selected. DOE has included the testing costs for battery charger applications to comply with the energy conservation standards in its calculation of conversion costs. At the higher CSLs, manufacturers could be compelled to redesign products that would have been redesigned years later in the base case. DOE accounts for the additional testing and engineering time by assuming that energy conservation standards would require manufacturers to alter products before the end of their natural lifecycle, resulting in substantial product conversion costs. The extent of the product conversion costs depends largely on whether a given standard level requires a technology change—moving from NiMH to lithium ion chemistry, for example—or only minor design tweaks. Within a given product class, some applications will face technology changes and the associated major redesigns at much lower CSLs than other applications. Therefore, DOE estimated product conversion costs for each individual application, rather than in aggregate by product class.

Because of the large number of applications analyzed, DOE approximates the impacts of standards-driven conversion costs by assuming manufacturers will incur a given multiple of normal R&D and normal capital expenditures. The exact multiple used depends on each CSL and each product class and is calibrated to manufacturer feedback received during interviews. Intuitively, this approach to product and capital expenditures accelerates the product cycle and compresses resources that would normally have been spread over a number of years into a shorter timeframe. In the standards case, these expenditures are in addition to, and not in lieu of, normal engineering, testing and equipment costs. DOE only assumes conversion costs for the proportion of shipments that fall below the analyzed TSL within any given application. Also, DOE separately calculated the conversion costs associated with the products sold in California that would have to comply with the CEC battery charger standard. These conversion costs are included in the base case and separate from the conversion costs associated with the DOE standard. For example, in product class 4, computer notebooks would not be impacted at CSL 1 because all computer notebooks meet CSL 1 in the base case. In contrast, DIY power tools would face more substantial conversion costs at CSL 1 because 40 percent of all models would not meet this level and would need to be upgraded. Therefore, DOE assumes these applications, despite incorporating battery chargers that are in the same product class, would incur different levels of R&D and capital expenditures.

Based on manufacturer interviews and the engineering analysis, DOE anticipates that new standards may result in the alteration of the external housing in the application, which would trigger additional design costs and expenses for new injection molds used to construct these housings. DOE tentatively believes these changes

would most likely occur in those applications incorporating battery chargers that require a substantial technology shift to meet the new standards. DOE includes the associated housing costs in its estimates of the capital conversion costs and believes its methodology accounts for these changes.

As discussed in section IV.I.2.a.iii of the EPS MIA methodology, AHAM and Cobra communicated concerns regarding testing and certification costs that are associated with changes in products due to new standards. (AHAM, No. 42 at p. 11; Cobra, No. 51 at p. 4) DOE summarizes and responds to these comments, which relate to battery chargers as well as EPSs, in section IV.I.2.a.iii.

PTI also noted that manufacturers will encounter ''stranded costs'' when forced to retire tooling before the end of its service life, resulting in unused inventory. Stranded costs are capital assets that are not yet fully depreciated, but are made obsolete by a new or amended energy conservation standard. (PTI, No. 47 at p. 13)

DOE agrees with PTI that energy conservation standards could strand tooling before the end of its useful life. DOE has estimated these costs as part of stranded assets, which are treated as a non-cash expense in the compliance year of the standard.

PTI asserted that the resources that manufacturers would ordinarily devote to new product development, which drives much of the power tool industry, would be reduced in order to meet any new regulations. (PTI, No. 47 at p. 13)

DOE understands there are opportunity costs related to any investment and that manufacturers may face difficult decisions in selecting non-energy related product development projects when faced with the prospect of standards-induced resource allocation. DOE notes that the GRIM analysis accounts for both ordinary, ongoing research and development efforts, as well as those prompted by new energy standards. DOE weighs these impacts when deciding the most appropriate TSL for the proposed standard.

PTI stated that the power tool industry is somewhat unique because a significant proportion of its members' product offerings revolve around detachable pack battery systems. Achieving higher CSLs depends on fulfilling certain technical changes that would require redesigning the entire battery charger, including the battery pack. According to PTI, this situation would disrupt the market because manufacturers would be required to abandon these legacy systems and strand a large installed base of consumers with unsupported systems. For example, in product class 4, PTI argued that CSL 2 would require nickel-based systems to switch to Li-ion, which would most likely require a complete redesign of the system that is unlikely to be backward compatible with existing tools. (PTI, No. 47 at p. 12)

DOE agrees it would take a substantial research and development effort to redesign nickel-based systems to Li-ion. For power tools, the backward compatibility issues described by PTI arise from designing the entire battery chargers (including the battery pack) for power tool applications. Based on its engineering analysis, DOE tentatively believes that the technical challenges to achieving backward compatibility could be met at CSL 2 in the context of a complete redesign. DOE has accounted for the additional engineering costs in the MIA.

v. Battery Charger Standards-Case Shipments

The base-case efficiency distribution and growth rate drive total industry revenue in the base case. As with EPS shipments, the standards case assumes that manufacturers will respond to standards by improving those products that do not meet the new standards to meet, but not exceed, the standard level. Products that are already as efficient as, or more efficient than, the standard level would remain unaffected under this approach. This is referred to as a ''roll-up'' scenario. DOE did not consider elasticity or substitution away from battery chargers in the standards case in the main NIA scenario. However, this was considered as a sensitivity analysis which is included as an appendix in chapter 12 of the NOPR TSD.

vi. Battery Charger Markup Scenarios

The revenue DOE calculates for the battery charger GRIM is the revenue generated from the sale of the application that incorporates the covered battery charger. It is the revenue earned on the sale of the product to the OEM's first customer (e.g., the retailer). After calculating the average retail price from the product price survey as discussed above, DOE discounted the price by the appropriate retailer markup (calculated in the market and technology assessment) to calculate the per-unit revenue the OEM generates for each application. To calculate the potential impacts on manufacturer profitability in the standards case, DOE analyzed how the incremental costs of more efficient battery chargers would impact this revenue stream on an application-by-application basis.

In comments, manufacturers raised concerns about higher battery charger input costs resulting in reduced profit margins. PTI stated that many manufacturers only sell through retailers and have ''price points'' that they must hit, particularly in the ''do-it-yourself'' (DIY) market. Although the cost to produce the product may change with more efficient battery chargers, in its view, there would be no change in price for the consumer. Faced with higher product costs, PTI asserted that manufacturers will have to reduce gross margin or ultimately reduce the utility of the product. (PTI, No. 47 at p. 12) Lester also expressed concerns about increased costs to produce golf cars, which will either be passed along to purchasers or result in reduced profit margins for the manufacturers. (Lester, No. 52 at p. 1)

DOE acknowledges that new or amended standards have the potential to increase product prices and disrupt manufacturer profitability, particularly as the market transitions to meet a new energy conservation standard. Based on the comments from interested parties and DOE's manufacturer interviews, there is a great deal of uncertainty regarding how the markets for such a wide variety of applications will adjust, both in the near term and long term. To account for this uncertainty, DOE analyzes three profitability, or markup, scenarios in the GRIM: the ''constant price,'' ''pass through,'' and ''flat markup'' scenarios.

The constant price scenario analyzes the situation in which manufacturers of applications are unable to pass on any incremental costs of more efficient battery chargers to their customers. This scenario is reflective of some manufacturers' description of the negotiating power of large retailers, who account for the vast majority of shipments of some applications. Manufacturers believe these large retailers would be unwilling to accept any price increases. This scenario results in the most significant negative impacts because no incremental costs added to the application—either because of higher battery charger component costs or because of investments in tooling and design—can be recouped. As a result, manufacturer gross margins decline as cost-of-goods-sold increase, on a dollar-for-dollar basis. The higher the incremental cost of the battery charger with respect to the total application price, the greater the impacts on the manufacturer. For example, the impact of an incremental $2.00 increase in the cost of the battery

charger is much greater on a product that sells for $50 than on a product that retails for $500.

For some applications in certain product classes, the max-tech battery charger price is nearly as expensive as the total base case application price itself. Under the constant price scenario, such circumstances can yield highly negative results, which are not meaningful because, in reality, producers would not continue to produce at prices that did not cover variable costs. If prices fell below the level necessary to cover variable costs, a firm would be better off not producing anything at all. Therefore, DOE applies a boundary condition in the constant price scenario, which assumes that as battery charger costs increase, application prices remain constant (and gross margin would continue to decline) only until manufacturers cease to cover their variable costs (where gross margin is zero). At that point, DOE assumes manufacturers can pass on any further incremental costs of the battery charger on a dollar-for-dollar basis to their customers.

In the pass through scenario, DOE assumes that manufacturers are able to pass through the incremental costs of more efficient battery chargers to their customers, but without earning any additional operating profit on those higher costs. Therefore, though less severe than the constant price scenario in which manufacturers absorb all incremental costs, this scenario also results in margin compression and adverse financial impacts as battery charger costs increase.

Lastly, DOE considers a flat markup scenario to analyze the upper bound (most positive) of profitability impacts following the compliance date of new standards. In this scenario, manufacturers are able to maintain their base case gross margin as a percentage of revenue at higher CSLs despite higher product costs of more efficient battery chargers. In other words, manufacturers are able to pass on, and fully mark up, the higher incremental product costs due to more efficient battery chargers. This scenario is a more likely outcome for high-value, differentiated products, for which energy efficiency indirectly drives customer-valued benefits such as lighter weight and greater transportability. For other applications, particularly low-cost products for which energy efficiency is not an important selling attribute, the scenario is less likely.

In summary, DOE believes these three scenarios present the potential range of profitability impacts on OEM application manufacturers.

b. Battery Charger Comments From Interested Parties

The following section discusses interested parties' comments on the preliminary analyses that impact the battery charger MIA methodology. In general, DOE provides background on an issue that was raised by interested parties, summarizes the interested parties' comments, and responds to those comments.

i. Compliance Date and Implementation Period

Many manufacturers commented on the implementation timeline of a new standard. For example, with respect to medical devices, Philips noted that the development life cycle is at least two to four years. Philips also mentioned that the regulatory approval cycle for medical products is longer than for consumer grade products, suggesting that medical devices should either be exempt or be given a longer transition time. (Philips, No. 43 at p. 3)

Lester expressed similar concerns, noting that the proposed timelines are not reasonable for large, integrated vehicle manufacturers. It added that properly designing, testing, and ramping up production of a battery charging system commonly exceeds three years. Furthermore, Lester stated that an insufficient timeline could lead manufacturers to utilize components that have not been designed or tested properly. Additionally, a premature compliance date could cause product shortages, defects, increased costs, and unplanned capital expenditures that will either be passed on to purchasers or result in reduced profits. Lester suggested a timeline extension to five years. (Lester, No. 52 at p. 1, 2) Similarly, Cobra stated that two years will not be enough time to comply if DOE sets the standard level near max tech. (Cobra, No. 51 at p. 2)

AHAM commented that the effective date should be two years after the final rule for small appliance battery charger products, but noted a longer time period might be necessary for some other product groups. AHAM argued that an earlier effective date would facilitate consistency across all 50 states. However, AHAM also mentioned that DOE must factor in additional time due to new requirements for third-party testing. (AHAM, No. 44 at p. 3, 11) Lastly, AHAM pointed out that the time needed depends significantly upon which standard level DOE chooses, as well as whether products are treated as both EPSs and battery chargers. (AHAM, Pub. Mtg. Tr., No. 37 at p. 373, 374)

EISA 2007 prescribed a two-year period between the issuance of the final rule for Class A EPSs and the compliance date of the amended energy conservation standard. See 42 U.S.C. 6295(u)(3)(D). Congress did not grant DOE with the specific authority to change this date for individual product classes falling within Class A as requested by Philips, Lester, and AHAM. However, DOE notes that Congress did not impose a specific compliance date timeline for battery chargers and newly covered non-Class A EPSs. For these products, DOE has tentatively concluded that the two-year window between the announcement of the final rule and compliance with rule is sufficient for manufacturers to meet the TSLs analyzed in today's rule. As the comments suggest, depending on the resources available to a given manufacturer, their technological starting point, and the proposed CSL, the typical product design cycle will vary significantly. As such, some manufacturers will likely have to dedicate more resources than others to upgrade some or all of their product lines. DOE notes, however, that designs achieving the levels proposed in today's NOPR are currently on the market for all product classes except battery charger product class 10. For all of these product classes, the TSLs proposed are below the max-tech level and either represent the best-in-market efficiency or a lower level. For battery charger product class 10, however, DOE is proposing the max-tech level based on information derived from manufacturer input. Therefore, DOE has tentatively concluded that the technologies required to reach the efficiencies proposed in today's rule are achievable within two years.

DOE requests comment on what an appropriate compliance date for battery chargers and non-Class A EPSs would be, including whether a two-year lead time would be reasonable. DOE may decide to adjust the compliance date for these products depending on the nature of the information it receives on this issue.

With respect to unplanned capital expenditures, DOE agrees that standards may require changes to tooling and equipment, as well as incremental engineering efforts. Ultimately, whether any manufacturer chooses to allocate the resources necessary to upgrade some or all of their product lines, or to source some or all of them, is a business decision. Regardless of these decisions, DOE accounts for the conversion costs for manufacturers to upgrade all their non-compliant products to comply with each TSL. DOE considers the results of

this analysis in weighing the projected benefits and burdens associated with the rule. See section 0 for that determination.

ii. Cumulative Regulatory Burden

Several manufacturers expressed concerns about other regulations that affect battery chargers. Three potential regulations are the U.S. Department of Transportation's regulation of the packaging and transportation of Li-ion cells in both end-products and in cell configurations, see 75 FR 1302 (Jan. 11, 2010), the future series of regulations on battery chargers from the European Union, (Commission Regulation (EC) No 278/2009 of 6 April 2009), and the California battery charger standard set by CEC (Docket # 11–AAER–2). (AHAM, No. 44 at p. 11, 15)

For the cumulative regulatory burden, DOE attempts to quantify and/or describe the impacts of other Federal regulations that have a compliance date within three years of the compliance date of this rulemaking. This analysis does not include the Department of Transportation's proposal to regulate the packaging and transportation of lithium ion cells given that no requirements are yet in place and any analysis attempting to account for what these requirements might be would be speculative. DOE does acknowledge that EU regulations on battery chargers would be an overlapping regulatory burden on manufacturers, if the EU decides to regulate battery chargers in the future, because identical products are sold throughout the world. At this time the EU has specifically excluded battery chargers from their regulations but will consider in the future to expand the scope of the regulation to include battery chargers (see the adopted draft regulation of EC No 278/2009, 17 October 2008, p. 10). DOE does not include the costs to comply with future regulations in the EU because they are outside the scope of the cumulative regulatory burden, which focuses on Federal regulations. However, DOE did quantitatively assess the impacts of the CEC battery charger standard on battery charger manufacturers in section V.B.2.e of this NOPR.

iii. Employment

Lester expressed concerns about losing domestic manufacturing jobs to low-cost countries as a result of implementing the new standard. The company stated that because switch-mode battery charger assembly is more labor intensive than other designs, it expects standards requiring switch-mode designs to accelerate the trend towards offshore manufacturing. Lester added that DOE should prioritize the impact to manufacturing in the U.S. among other criteria in determining which standards to adopt. According to Lester, battery chargers for applications that use transformer-based battery chargers, which are typically used in high-energy applications, tend to correlate with requirements for longer life, greater durability, and higher reliability. (Lester, No. 52 at p. 3)

While the vast majority of applications using EPSs and battery chargers are manufactured overseas, DOE agrees that new or amended standards could adversely impact domestic employment for companies currently producing covered products in the United States. This is especially a concern for the golf car industry because battery chargers for this application still have a significant U.S. manufacturing presence. Any manufacturers that would be forced to develop a new technology to meet new standards, especially one that is more labor intensive, would face significant economic pressures to move operations overseas or source products directly from overseas third-party suppliers. DOE's direct employment analysis (see section V.B.2.b) discusses the preliminary estimates for the impacts on changes in employment at the analyzed TSLs.

In selecting the TSLs proposed in today's notice, the Secretary considers a variety of factors to weigh the overall benefits and burdens of the rule, including, as Lester notes, the impact on United States manufacturing. DOE also notes that the impacts on small businesses are treated directly in the Regulatory Flexibility Analysis in section VI.B.

iv. Supply Chain

Lester expressed concerns over the potential for supply chain disruptions, noting that as production of chargers is moved to lower-cost countries, manufacturers of electric vehicles will face logistical risks that are less likely to occur domestically. (Lester, No. 52 at p. 2)

DOE agrees that overseas manufacturing can complicate the supply chain of firms that elect to move production offshore. However, such a strategy is a business decision and not one that is required to meet the TSLs analyzed in today's rulemaking. DOE also notes that the vast majority of all battery chargers on the market already make use of global supply chains.

4. Comments From Interested Parties Related to EPSs and Battery Chargers

The following section discusses interested parties' comments on the preliminary analyses that impact both the EPS and battery charger MIA methodology. This section provides background on specific issues raised by interested parties, summarizes the relevant comments, and discusses DOE's response.

a. Cumulative Burden

AHAM expressed concern about the possibility of DOE applying CEC's Tier 2 EPS standards which, it asserts, are wrongly applied to the wall adapters of battery chargers. (AHAM, No. 44 at p. 15) PTI added that DOE should consider the cumulative regulatory burden that would be imposed if the CEC were to regulate the power factor of battery chargers. This would increase the costs of achieving higher efficiencies. (PTI, No. 47 at p. 11)

With respect to the CEC standards, DOE notes that the proposed EPS standards in today's NOPR would preempt state regulations on EPS efficiencies. As for potential power factor regulation, DOE has included a quantitative analysis of the CEC standard on battery charger manufacturers in section V.B.2.e.

Similarly, Philips expressed concerns about FDA regulations on medical products, which can delay the time-to-market from a few weeks to many months. Philips also noted that the EU Directive on the Restriction of Hazardous Substances (RoHS) proposed a minimum of six years for medical device manufacturers to reach compliance, which reflects a longer product design cycle and regulatory approval process. (Philips, No. 43 at p. 3)

DOE acknowledges that the EU RoHS proposed a minimum of six years for medical device manufacturers to comply with the directive. However, EU's RoHS regulations have the potential to affect the entire medical application, while the DOE energy conservation standards at issue here cover only the battery charger or EPS portion of the device. DOE does not include the costs to comply with future regulations in the EU as part of the cumulative regulatory burden because they are outside its scope, which focuses on U.S. regulations. DOE notes that it has the authority to set a compliance period for non-Class A EPSs and battery chargers that varies from the two-year lag between the issuance of the final rule and the compliance date of the standard prescribed in EISA for Class A

EPSs. However, DOE has consulted with the FDA and does not believe that this extension for non-Class A EPSs is necessary. This situation is described in detail in chapter 3 of the TSD. DOE also does not believe there are technical differences between medical EPSs and non-medical EPSs that would affect the ability of manufacturers to improve the efficiency of medical EPSs. However, DOE requests further comment on the appropriateness of the proposed compliance date for non-Class A EPS and battery charger product classes and if there are any specific medical applications that would be adversely affected by a 2013 date that mirrors the statutorily-prescribed compliance date for Class A EPSs.

Cobra commented on the significant burden facing small manufacturers from recent regulatory actions including EISA 2007, the Consumer Product Safety Improvement Act of 2008 (CPSIA 2008), California's Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), Mercury-Containing and Rechargeable Battery Management Act, recycling regulations, and EU's RoHS. Cobra contended that these regulations challenge its ability to compete against larger companies while spending resources to prove compliance with all established regulations. Cobra also mentioned that while it does not manufacture products that are covered under CPSIA 2008, it asserted that it needs to demonstrate to customers that its products can still satisfy those requirements for marketing purposes. (Cobra, No. 53 at pp. 1, 2)

DOE agrees that maintaining compliance with the various standards may be a challenge for manufacturers, especially smaller manufacturers. Furthermore, DOE understands that because products with EPSs and battery chargers are sold globally, the design of these products are more harmonized than for other appliances. DOE has analyzed the cost to comply with the EISA requirements in this rulemaking. DOE also further describes the recycling requirements and RoHS in chapter 12 of the TSD. DOE has also attempted to quantify these costs where applicable.

b. Competition

AHAM asked DOE to evaluate the potential for a reduction in competition, in the event standards cause manufacturers of low-cost products to leave the market. (AHAM, Pub. Mtg. Tr., No., No. 37 at p. 144)

EPCA directs DOE to consider any lessening of competition likely to result from standards. It directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary, not later than 60 days after the publication of a proposed rule, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii)) DOE will transmit a copy of today's proposed rule to the Attorney General and request that the U.S. Department of Justice (DOJ) provide its determination on this issue. DOE will publish and address the Attorney General's determination in the final rule, if any, and will pay particular attention to any potential competitive impacts in that determination.

At this time, DOE does not believe there is significant potential for a reduction in competition due to the standards proposed in this rule. Particularly for some of the low-cost products, there are relatively few barriers to entry and the TSLs proposed in today's rule do not require use of patented technology. Technology that can be used exclusively by one manufacturer does not pass the screening analysis.

However, given the wide array of applications that incorporate covered EPSs and battery chargers, DOE seeks comment on which specific markets, if any, exhibit the potential for a reduction in competition.

5. Manufacturer Interviews

DOE conducted additional interviews with manufacturers following the preliminary analysis in preparation for the NOPR analysis. In these interviews, DOE asked manufacturers to describe their major concerns with this rulemaking. The following section describes the key issues identified by manufacturers during these interviews.

a. Product Groupings

Several manufacturers expressed concern over the approach DOE outlined in which a variety of different applications would be grouped together within the same product class and would have to meet equivalent standards. EPS and battery charger product classes are defined by characteristics such as type of current conversion, voltage, and output power. However, the proposed EPS and battery charger product classes do not necessarily group applications performing similar end-use functions. Manufacturers stated that grouping applications that consume a larger amount of electricity over their lifetime with applications that consume only a fraction of electricity over their lifetime can put the applications that are used less frequently at an unfair disadvantage.

Manufacturers were particularly concerned about the potential for groupings to impact specific battery charger applications after finalizing the standard. For battery chargers, DOE is proposing standards using one UEC equation for each product class. Specific applications can be grouped into a product class whose individual usage profile differs from the usual profile of the product class. This is especially true if the shipments of one application are significantly greater than the shipments of another application with a very different usage profile (i.e., the millions of laptop shipments versus DIY power tools). Both laptops and DIY power tools would be regulated using the same usage profile parameters to satisfy a given energy conservation standard. Therefore, there is less potential for consumers to save energy cost effectively with respect to those applications that are not used frequently compared to applications that are used continuously even though both applications would be required to meet the same standard.

DOE recognizes manufacturer concerns over how specific applications are grouped together as a result of the proposed division of product classes. DOE's LCC analysis and manufacturing impact analysis evaluate the impacts on users and manufacturers, respectively, on a applications-specific basis. Although the UEC is established at the product class level, the granularity of these analyses enables DOE to consider the benefits and burdens on users and manufacturers of specific applications, and take those results into consideration in determining which TSLs to select.

b. Competition From Substitutes

Manufacturers have stated that several of their applications compete directly with applications using other forms of energy, such as products powered by gasoline, disposable alkaline batteries, or corded products. Products that use battery chargers must remain cost competitive with these alternatively powered products because these products are close substitutes. Manufacturers of lawn care products, such as mowers and trimmers, and mobility units, such as motorized bikes and golf cars, are competing in the same markets as gas-powered versions of these applications. Similarly, manufacturers of smaller electronic devices, such as digital cameras, are competing in the same market as disposable alkaline battery-powered digital cameras. Several applications also have direct competition with similar non-electric applications, such as electric toothbrushes and DIY power

tools. Having products powered by a rechargeable battery is a feature that adds value for consumers. A significant increase in the cost of manufacturing the battery charger could lead manufacturers to remove the rechargeable feature of an application or choose an alternative method to power the device, ultimately reducing the consumer utility for these applications. If energy conservation standards lead to a significant price increase, consumers could switch to these alternatives.

Based on these concerns, DOE considered the impact of price elasticity on application shipment volumes. These price elasticity sensitivity results are presented in Appendix 12–B of the TSD.

c. Test Procedure Concerns

While most manufacturers agree that using the UEC is an appropriate test procedure metric for battery chargers, some battery charger manufacturers stated there is a problem of separating the battery charging function of an application from the other functions being performed by the application. In their view, it is not easy to isolate the battery charging portion of the application for testing and/or creating cost-efficiency curves. Manufacturers stated that the test procedure must clearly separate out the charging portion of the energy consumption in order to regulate its efficiency accurately. DOE specifically took this factor into consideration for UPS manufacturers and explains its approach in detail in section IV.C.2.i of this NOPR.

d. Multiple Regulation of EPSs and Battery Chargers

Manufacturers raised concerns that specific applications that are shipped with both an EPS and a battery charger would be subject to regulations for both components—one energy conservation standard for the EPS and a separate energy conservation standard for the battery charger of the same application. Having to meet two separate standards may not allow the manufacturers to maximize the efficiency of both the EPS and the battery charger together and could add to the overall cost of the application. DOE took these comments into consideration but has tentatively determined that establishing standards for each product was the most appropriate action given the statutory requirements to set standards for these products. For further detail and DOE's rationale for this decision, see section IV.A.1 of this NOPR.

e. Profitability Impacts

Several manufacturers stated that they expect energy conservation standards to negatively impact the profitability of battery chargers. At higher CSLs, standards could increase MPCs and manufacturers believed these higher costs would not necessarily be passed on to consumers. Several applications use specific price points that consumers expect those applications to have. Consequently, manufacturers believe that cost increases would be at least partly absorbed by manufacturers to keep retail prices from rising sharply.

The battery charger often represents a significant portion of the overall cost of the application. Any increase in the cost of the battery charger would have a significant impact on the cost of these applications as a whole. If energy conservation standards led to a significant reduction in profitability, some manufacturers could potentially exit the market and reduce the number of competitors. Additionally, many electronic applications are considered luxury items so consumers could also choose to forgo their purchases altogether if the application prices increased substantially.

As discussed in section IV.I.2.a and IV.I.3.a of this NOPR, DOE evaluates a range of profitability scenarios in the MIA that take these specific concerns into account. These sections and Chapter 12 of the TSD discuss the results and details of those analyses.

f. Potential Changes to Product Utility

Manufacturers believe adverse impacts from new and amended standards could also indirectly affect product utility. Several manufacturers indicated that other features that do not affect efficiency could be removed or component quality could be sacrificed to meet new and amended standard levels and maintain current application prices. Manufacturers also stated that the financial burden of developing products to meet new and amended energy conservation standards has an opportunity cost due to limited capital and R&D dollars. Investments incurred to meet new and amended energy conservation standards reflect foregone investments in innovation and the development of new features that consumers value and on which manufacturers earn higher absolute profit.

DOE's engineering analysis only analyzes utility-neutral design changes to meet higher efficiency standards and accounts for the costs incurred to achieve those levels. While there may be cheaper ways to meet a given efficiency level by reducing other features that provide utility, those design paths are not assumed in DOE's analyses. DOE recognizes the opportunity cost of standards-induced investment and accounts for the conversion expenditures manufacturers may incur at each TSL, as discussed in section IV.I.3.a.iv. Whether a given manufacturer chooses to mitigate these costs (and the associated product costs illustrated in the engineering analysis' cost-efficiency curves) by reducing product utility is a business decision and not one mandated by the proposed energy conservation standards.

J. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a proposed standard. Employment impacts include direct and indirect impacts. Direct employment impacts are changes in the number of employees of manufacturers of the products subject to standards, their suppliers, and related service firms. The MIA addresses the direct employment impacts that concern manufacturers of battery chargers and EPSs. Indirect employment impacts from standards consist of the jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, due to: (1) Reduced spending by end users on energy; (2) reduced spending on new energy supplies by the utility industry; (3) increased spending on new products to which the new standards apply; and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sectoral employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS). The BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than do expenditures in other sectors of the economy.[55] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the

[55] See Bureau of Economic Analysis, *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II),* U.S. Department of Commerce (1992).

effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of energy conservation standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, based on the BLS data alone, the Department believes net national indirect employment may increase due to shifts in economic activity resulting from amended standards for Class A EPSs and new standards for non-Class A EPSs and battery chargers.

In developing today's NOPR, DOE estimated indirect national employment impacts using an input/output (I–O) model of the U.S. economy called Impact of Sector Energy Technologies version 3.1.1 (ImSET).[56] ImSET is a special purpose version of the ''U.S. Benchmark National Input-Output'' model, designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model with structural coefficients to characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use. DOE notes that ImSET is not a general equilibrium forecasting model. Given the relatively small change to expenditures due to efficiency standards and the resulting small changes to employment, however, DOE believes that the size of any forecast error caused by using ImSET will be small.

No comments were received on the preliminary TSD for battery chargers and EPSs concerning the employment impacts analysis. For more details on the employment impact analysis, see chapter 13 of the NOPR TSD.

K. Utility Impact Analysis

The utility impact analysis estimates several important effects on the utility industry that would result from the adoption of new or amended energy conservation standards. For the NOPR analysis, DOE used the NEMS–BT model to generate forecasts of electricity and natural gas consumption, electricity generation by plant type, and electric generating capacity by plant type, that would result from each considered TSL. DOE obtained the energy savings inputs associated with efficiency improvements to the subject products from the NIA. DOE conducts the utility impact analysis as a scenario that departs from the latest *AEO* Reference case. For this NOPR, the estimated impacts of amended energy conservation standards are the differences between values forecasted by NEMS–BT and the values in the *AEO2010* Reference case (which does not contemplate amended standards).

As part of the utility impact analysis, DOE used NEMS–BT to assess the impacts on natural gas prices of the reduced demand for natural gas projected to result from the considered standards. DOE also used NEMS–BT to assess the impacts on electricity prices of the reduced need for new electric power plants and infrastructure projected to result from the considered standards. In NEMS–BT, changes in power generation infrastructure affect utility revenue, which in turn affects electricity prices. DOE estimated the change in electricity prices projected to result over time from each considered TSL. The benefits associated with the impacts of proposed standards on energy prices are discussed in section IV.G.5.

For more details on the utility impact analysis, see chapter 14 of the NOPR TSD

L. Emissions Analysis

In the emissions analysis, DOE estimated the reduction in power sector emissions of carbon dioxide (CO_2), nitrogen oxides (NO_X), and mercury (Hg) from amended energy conservation standards for Class A EPSs and new energy conservation standards for non-Class A EPSs and battery chargers. DOE used the NEMS–BT computer model, which is run similarly to the AEO NEMS, except that battery charger and EPS energy use is reduced by the amount of energy saved (by fuel type) due to each TSL. The inputs of national energy savings come from the NIA spreadsheet model, while the output is the forecasted physical emissions. The net benefit of each TSL in today's proposed rule is the difference between the forecasted emissions estimated by NEMS–BT at each TSL and the *AEO 2010* Reference Case. NEMS–BT tracks CO_2 emissions using a detailed module that provides results with broad coverage of all sectors and inclusion of interactive effects. For today's NOPR, DOE used the version of NEMS–BT based on *AEO2010,* which incorporated projected effects of all emissions regulations promulgated as of January 31, 2010. For the final rule, DOE intends to revise the emissions analysis using the most current version of NEMS–BT.

SO_2 emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap-and-trade programs, and DOE has preliminarily determined that these programs create uncertainty about the impact of energy conservation standards on SO_2 emissions. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (DC). SO_2 emissions from 28 eastern states and DC are also limited under the Clean Air Interstate Rule (CAIR; 70 FR 25162 (May 12, 2005)), which created an allowance-based trading program. Although CAIR was remanded to EPA by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit), see *North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008), it remains in effect temporarily, consistent with the D.C. Circuit's earlier opinion in *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008). On July 6, 2011 EPA issued a replacement for CAIR, the Cross-State Air Pollution Rule. 76 FR 48208 (August 8, 2011). (See *http://www.epa.gov/crossstaterule/*). On December 30, 2011, however, the D.C. Circuit stayed the new rules while a panel of judges reviews them, and told EPA to continue enforcing CAIR (see *EME Homer City Generation* v. *EPA,* No. 11–1302, Order at *2 (D.C. Cir. Dec. 30, 2011)). The *AEO 2010* NEMS used for today's NOPR assumes the implementation of CAIR.

The attainment of emissions caps is typically flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Under existing EPA regulations any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the imposition of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by any regulated EGU. However, if the amended and new standards resulted in a permanent increase in the quantity of unused emissions allowances, there would be an overall reduction in SO_2 emissions from the standards. While there remains some uncertainty about the ultimate effects of efficiency standards on SO_2 emissions covered by the existing cap-and-trade system, the NEMS–BT modeling system that DOE uses to forecast emissions reductions currently indicates that no physical reductions in power sector emissions would occur for SO_2.

As discussed above, the *AEO 2010* NEMS used for today's NOPR assumes the implementation of CAIR, which established a cap on NO_X emissions in 28 eastern States and the District of Columbia. With CAIR in effect, the

[56] M.J. Scott, O.V. Livingston, J.M. Roop, R.W. Schultz, and P.J. Balducci, *ImSET 3.1: Impact of Sector Energy Technologies; Model Description and User's Guide* (2009) (Available at: *http://www.pnl.gov/main/publications/external/technical_reports/PNNL-18412.pdf*).

energy conservation standards for battery chargers and EPSs are expected to have little or no physical effect on NO_X emissions in those States covered by CAIR, for the same reasons that they may have little effect on SO_2 emissions. However, the proposed standards would be expected to reduce NO_X emissions in the 22 States not affected by CAIR. For these 22 States, DOE is using the NEMS–BT to estimate NO_X emissions reductions from the standards considered in today's NOPR.

On December 21, 2011, EPA announced national emissions standards for hazardous air pollutants (NESHAPs) for mercury and certain other pollutants emitted from coal and oil-fired EGUs. (See *http://epa.gov/mats/pdfs/20111216MATSfinal.pdf*). The NESHAPs do not include a trading program and, as such, DOE's energy conservation standards would likely reduce Hg emissions. For the emissions analysis for this rulemaking, DOE estimated mercury emissions reductions using NEMS–BT based on *AEO2010,* which does not incorporate the NESHAPs. DOE expects that future versions of the NEMS–BT model will reflect the implementation of the NESHAPs.

For more details on the emissions analysis, see chapter 15 of the NOPR TSD.

M. Monetizing Carbon Dioxide and Other Emissions Impacts

As part of the development of this proposed rule, DOE considered the estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X that are expected to result from each of the TSLs considered. In order to make this calculation similar to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the forecast period for each TSL. This section summarizes the basis for the monetary values used for each of these emissions and presents values considered in this rulemaking.

For today's NOPR, DOE is relying on a set of values for the social cost of carbon (SCC) that was developed by an interagency process. A summary of the basis for these values is provided below, and a more detailed description of the methodologies used is provided as an appendix to chapter 16 of the TSD.

1. Social Cost of Carbon

Under section 1(b) of Executive Order 12866, agencies must, to the extent permitted by law, ''assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.'' The purpose of the SCC estimates presented here is to allow agencies to incorporate the monetized social benefits of reducing CO_2 emissions into cost-benefit analyses of regulatory actions that have small, or ''marginal,'' impacts on cumulative global emissions. The estimates are presented with an acknowledgement of the many uncertainties involved and with a clear understanding that they should be updated over time to reflect increasing knowledge of the science and economics of climate impacts.

As part of the interagency process that developed these SCC estimates, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. The main objective of this process was to develop a range of SCC values using a defensible set of input assumptions grounded in the existing scientific and economic literatures. In this way, key uncertainties and model differences transparently and consistently inform the range of SCC estimates used in the rulemaking process.

a. Monetizing Carbon Dioxide Emissions

The SCC is an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year. It is intended to include (but is not limited to) changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. Estimates of the SCC are provided in dollars per metric ton of carbon dioxide.

When attempting to assess the incremental economic impacts of carbon dioxide emissions, the analyst faces a number of serious challenges. A recent report from the National Research Council [57] points out that any assessment will suffer from uncertainty, speculation, and lack of information about (1) future emissions of greenhouse gases, (2) the effects of past and future emissions on the climate system, (3) the impact of changes in climate on the physical and biological environment, and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and monetize the harms associated with climate change will raise serious questions of science, economics, and ethics and should be viewed as provisional.

Despite the serious limits of both quantification and monetization, SCC estimates can be useful in estimating the social benefits of reducing carbon dioxide emissions. Consistent with the directive in Executive Order 12866 quoted above, the purpose of the SCC estimates presented here is to make it possible for Federal agencies to incorporate the social benefits from reducing carbon dioxide emissions into cost-benefit analyses of regulatory actions that have small, or ''marginal,'' impacts on cumulative global emissions. Most Federal regulatory actions can be expected to have marginal impacts on global emissions.

For such policies, the agency can estimate the benefits from reduced (or costs from increased) emissions in any future year by multiplying the change in emissions in that year by the SCC value appropriate for that year. The net present value of the benefits can then be calculated by multiplying each of these future benefits by an appropriate discount factor and summing across all affected years. This approach assumes that the marginal damages from increased emissions are constant for small departures from the baseline emissions path, an approximation that is reasonable for policies that have effects on emissions that are small relative to cumulative global carbon dioxide emissions. For policies that have a large (non-marginal) impact on global cumulative emissions, there is a separate question of whether the SCC is an appropriate tool for calculating the benefits of reduced emissions. This concern is not applicable to this notice, and DOE does not attempt to answer that question here.

At the time of the preparation of this notice, the most recent interagency estimates of the potential global benefits resulting from reduced CO_2 emissions in 2010, expressed in 2010$, were $4.9, $22.3, $36.5, and $67.6 per metric ton avoided. For emissions reductions that occur in later years, these values grow in real terms over time. Additionally, the interagency group determined that a range of values from 7 percent to 23 percent should be used to adjust the global SCC to calculate domestic effects,[58] although preference is given to

[57] National Research Council. *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use.* National Academies Press: Washington, DC (2009).

[58] It is recognized that this calculation for domestic values is approximate, provisional, and highly speculative. There is no a priori reason why domestic benefits should be a constant fraction of net global damages over time.

consideration of the global benefits of reducing CO_2 emissions.

It is important to emphasize that the interagency process is committed to updating these estimates as the science and economic understanding of climate change and its impacts on society improves over time. Specifically, the interagency group has set a preliminary goal of revisiting the SCC values within 2 years or at such time as substantially updated models become available, and to continue to support research in this area. In the meantime, the interagency group will continue to explore the issues raised by this analysis and consider public comments as part of the ongoing interagency process.

b. Social Cost of Carbon Values Used in Past Regulatory Analyses

To date, economic analyses for Federal regulations have used a wide range of values to estimate the benefits associated with reducing carbon dioxide emissions. In the final model year 2011 CAFE rule, the U.S. Department of Transportation (DOT) used both a ''domestic'' SCC value of $2 per ton of CO_2 and a ''global'' SCC value of $33 per ton of CO_2 for 2007 emission reductions (in 2007$), increasing both values at 2.4 percent per year.[59] DOT also included a sensitivity analysis at $80 per ton of CO_2. See *Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Year 2011,* 74 FR 14196 (March 30, 2009) (Final Rule); Final Environmental Impact Statement Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2011–2015 at 3–90 (Oct. 2008) (Available at: *http://www.nhtsa.gov/fuel-economy*). A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in carbon dioxide emissions, while a global SCC value is meant to reflect the value of damages worldwide.

A 2008 regulation proposed by DOT assumed a domestic SCC value of $7 per ton of CO_2 (in 2006$) for 2011 emission reductions (with a range of $0–$14 for sensitivity analysis), also increasing at 2.4 percent per year. See *Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2011–2015,* 73 FR 24352 (May 2, 2008) (Proposed Rule); Draft Environmental Impact Statement Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2011–2015 at 3–58 (June 2008) (Available at: *http://www.nhtsa.gov/fuel-economy*). A regulation for packaged terminal air conditioners and packaged terminal heat pumps finalized by DOE in October of 2008 used a domestic SCC range of $0 to $20 per ton CO_2 for 2007 emission reductions (in 2007$). 73 FR 58772, 58814 (Oct. 7, 2008) In addition, EPA's 2008 Advance Notice of Proposed Rulemaking on Regulating Greenhouse Gas Emissions Under the Clean Air Act identified what it described as ''very preliminary'' SCC estimates subject to revision. 73 FR 44354 (July 30, 2008). EPA's global mean values were $68 and $40 per ton CO_2 for discount rates of approximately 2 percent and 3 percent, respectively (in 2006$ for 2007 emissions).

In 2009, an interagency process was initiated to offer a preliminary assessment of how best to quantify the benefits from reducing carbon dioxide emissions. To ensure consistency in how benefits are evaluated across agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to quantify avoided climate change damages from reduced CO_2 emissions. The interagency group did not undertake any original analysis. Instead, it combined SCC estimates from the existing literature to use as interim values until a more comprehensive analysis could be conducted. The outcome of the preliminary assessment by the interagency group was a set of five interim values: global SCC estimates for 2007 (in 2006$) of $55, $33, $19, $10, and $5 per ton of CO_2.

These interim values represent the first sustained interagency effort within the U.S. government to develop an SCC for use in regulatory analysis. The results of this preliminary effort were presented in several proposed and final rules and were offered for public comment in connection with proposed rules, including the joint EPA–DOT fuel economy and CO_2 tailpipe emission proposed rules.

c. Current Approach and Key Assumptions

Since the release of the interim values, the interagency group reconvened on a regular basis to generate improved SCC estimates, which were considered for this proposed rule. Specifically, the group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment models (IAMs) commonly used to estimate the SCC: the FUND, DICE, and PAGE models.[60] These models are frequently cited in the peer-reviewed literature and were used in the last assessment of the Intergovernmental Panel on Climate Change. Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach to model how changes in emissions result in changes in economic damages. A key objective of the interagency process was to enable a consistent exploration of the three models while respecting the different approaches to quantifying damages taken by the key modelers in the field. An extensive review of the literature was conducted to select three sets of input parameters for these models: climate sensitivity, socio-economic and emissions trajectories, and discount rates. A probability distribution for climate sensitivity was specified as an input into all three models. In addition, the interagency group used a range of scenarios for the socio-economic parameters and a range of values for the discount rate. All other model features were left unchanged, relying on the model developers' best estimates and judgments.

The interagency group selected four SCC values for use in regulatory analyses. Three values are based on the average SCC from three integrated assessment models, at discount rates of 2.5, 3, and 5 percent. The fourth value, which represents the 95th percentile SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution. For emissions (or emission reductions) that occur in later years, these values grow in real terms over time, as depicted in Table IV–31.

[59] Throughout this section, references to tons of CO_2 refer to metric tons.

[60] The models are described in appendix 16–A of the TSD.

Table IV-31 Social Cost of CO_2, 2010–2050 (in 2007 dollars per metric ton)

	Discount Rate			
	5% Avg	3% Avg	2.5% Avg	3% 95th
2010	4.7	21.4	35.1	64.9
2015	5.7	23.8	38.4	72.8
2020	6.8	26.3	41.7	80.7
2025	8.2	29.6	45.9	90.4
2030	9.7	32.8	50.0	100.0
2035	11.2	36.0	54.2	109.7
2040	12.7	39.2	58.4	119.3
2045	14.2	42.1	61.7	127.8
2050	15.7	44.9	65.0	136.2

It is important to recognize that a number of key uncertainties remain, and that current SCC estimates should be treated as provisional and revisable since they will evolve with improved scientific and economic understanding. The interagency group also recognizes that the existing models are imperfect and incomplete. The National Research Council report mentioned above points out that there is tension between the goal of producing quantified estimates of the economic damages from an incremental ton of carbon and the limits of existing efforts to model these effects. There are a number of concerns and problems that should be addressed by the research community, including research programs housed in many of the Federal agencies participating in the interagency process to estimate the SCC.

DOE recognizes the uncertainties embedded in the estimates of the SCC used for cost-benefit analyses. As such, DOE and others in the U.S. Government intend to periodically review and reconsider those estimates to reflect increasing knowledge of the science and economics of climate impacts, as well as improvements in modeling. In this context, statements recognizing the limitations of the analysis and calling for further research take on exceptional significance.

In summary, in considering the potential global benefits resulting from reduced CO_2 emissions, DOE used the most recent values identified by the interagency process, adjusted to 2010$ using the GDP price deflator. For each of the four cases specified, the values used for emissions in 2010 were $4.9, $22.3, $36.5, and $67.6 per metric ton avoided (values expressed in 2010$).[61] To monetize the CO_2 emissions reductions expected to result from amended standards for Class A EPSs and new standards for non-Class A EPSs and battery chargers in 2013–2042, DOE used the values identified in Table A1 of the ''Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,'' which is reprinted in appendix 16–A of the NOPR TSD, appropriately adjusted to 2010$. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SCC values in each case.

d. Valuation of Other Emissions Reductions

DOE investigated the potential monetary benefit of reduced NO_X emissions from the TSLs it considered. As noted above, new or amended energy conservation standards would reduce NO_X emissions in those 22 states that are not affected by the CAIR. DOE estimated the monetized value of NO_X emissions reductions resulting from each of the TSLs considered for today's NOPR based on environmental damage estimates found in the relevant scientific literature. Available estimates suggest a very wide range of monetary values, ranging from $370 per ton to $3,800 per ton of NO_X from stationary sources, measured in 2001$ (equivalent to a range of $450 to $4,623 per ton in 2010$).[62] In accordance with OMB guidance, DOE conducted two calculations of the monetary benefits derived using each of the economic values used for NO_X, one using a real discount rate of 3 percent and another using a real discount rate of 7 percent.[63]

DOE is aware of multiple agency efforts to determine the appropriate range of values used in evaluating the potential economic benefits of reduced Hg emissions. DOE has decided to await further guidance regarding consistent valuation and reporting of Hg emissions before it once again monetizes Hg emissions in its rulemakings.

N. Discussion of Other Comments

NEEP viewed the adoption of strong Federal energy conservation standards for battery chargers and EPSs as smart, minimal-cost mechanisms to help Northeast states achieve their aggressive energy savings goals. (NEEP, No. 49 at p. 3)

Lester suggested that DOE consider establishing incentive programs for U.S. manufacturers as an alternative to setting efficiency standards. The company claimed that these incentives would encourage the development of efficient, domestically produced products. (Lester, No. 50 at p. 3) DOE notes that this rulemaking constitutes an ''economically significant regulatory action'' under Executive Order (E.O.) 12866, Regulatory Planning and Review. 58 FR 51735 (October 4, 1993) Under 10

[61] Table A1 presents SCC values through 2050. For DOE's calculation, it derived values after 2050 using the 3-percent per year escalation rate used by the interagency group.

[62] For additional information, refer to U.S. Office of Management and Budget, Office of Information and Regulatory Affairs, *2006 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities,* Washington, DC.

[63] OMB, Circular A–4: Regulatory Analysis (Sept. 17, 2003).

CFR part 430, subpart C, appendix A, section III.12, DOE must evaluate non-regulatory alternatives to proposed standards by performing a regulatory impact analysis (RIA). 61 FR 36981 at p. 36978 (July 15, 1996) In this RIA, DOE compared the effectiveness of multiple possible alternatives to standards, including manufacturer tax credits for efficient battery chargers and EPSs. The results of this analysis are available in chapter 17 of the TSD.

During manufacturer interviews, DOE also received questions regarding multi-voltage and multi-capacity battery chargers. Particularly with multi-voltage battery chargers, it is possible for the device to fall into more than one product class and manufacturers sought clarification on how to certify these devices. DOE notes that its recently promulgated test procedure describes the manner in which a multi-voltage or multi-capacity device must be tested. 76 FR 31750. For these devices, manufacturers may be required to test their product more than once and the batteries with which the devices are used for each test may put the battery charger into two product classes. If that is the case, the device would need to be certified for each product class for which it has been tested. This approach is consistent with DOE's approach for switch-selectable EPSs and DOE tentatively believes that this approach will result in the maximum energy savings for its proposed standards. DOE will consider alternative approaches and requests feedback from manufacturers and other interested parties on this proposal and any others, such as certifying at just the highest or lowest capacity or voltage.

O. Marking Requirements

Under 42 U.S.C. 6294(a)(5), Congress granted DOE with the specific authority to establish labeling or marking requirements for a number of consumer products. Among these products are battery chargers and EPSs. DOE notes that the creation of such marking requirements, particularly for a portion of the products covered by today's proposal, was specifically contemplated by Congress. In particular, EISA 2007 set standards for Class A EPSs and created marking requirements for these products. Section 301 of that public law specified that all Class A EPSs shall be clearly and permanently marked in accordance with the ''International Efficiency Marking Protocol for External Power Supplies'' (the ''Marking Protocol'').[64] (42 U.S.C. 6295(u)(3)(C))

The Marking Protocol, developed by the EPA in consultation with stakeholders both within and outside the United States, was originally designed in 2005 and updated in 2008 to meet the needs of those voluntary and regulatory programs in place at those times. In particular, the Marking Protocol defines efficiency mark ''IV'', which corresponds to the current Federal standard for Class A EPSs, and efficiency mark ''V'', which corresponds to ENERGY STAR version 2.0. (The ENERGY STAR program for EPSs ended on December 31, 2010.) In addition, these marks currently apply only to single-voltage EPSs with nameplate output power less than 250 watts, but not to multiple-voltage or high-power EPSs.

In today's notice, DOE proposes to amend the product marking (or ''labeling'') requirements for EPSs and is considering adopting a similar requirement for battery chargers. Specifically, DOE proposes to (1) extend to all EPSs the marking requirement created by EISA 2007, which currently applies only to Class A EPSs; (2) reserve an efficiency mark (or marks) in the Marking Protocol for standard levels in the final rule that do not already have a corresponding mark; and (3) require that EPSs in proposed product class N bear a specific marking to distinguish them from other EPSs and facilitate compliance verification. In addition, DOE is considering establishing a distinguishing mark for EPSs for certain security or life safety alarm or surveillance systems and is considering requiring that battery chargers be marked in accordance with a battery charger marking protocol similar to that for EPSs. DOE welcomes comment on all of these issues.

DOE notes that it is proposing standards for EPSs in product classes B, C, D, and E that exceed efficiency level ''V'', the highest level currently defined in the Marking Protocol. In addition, it is proposing standards for multiple-voltage and high-power EPSs. DOE is working with EPA to revise the Marking Protocol to accommodate all of the new and amended standards for EPSs being proposed today.

DOE is also proposing to create a separate product class (product class N) for EPSs that cannot power an end-use consumer product directly. They would be subject to less stringent standards than those being proposed today for their ''direct operation'' counterparts. To aid in determining whether EPSs are in compliance with standards, DOE proposes that (1) a Class A EPS in product class N be permanently marked with an ''N'' as a superscript to the circle that contains the appropriate Roman numeral; (2) a non-Class A EPS in product class N be permanently marked with the abbreviation ''EPS–N''; (3) an EPS in product class N that is sold separately from the battery charger or end-use consumer product with which it is intended to be used shall also be permanently marked with the manufacturer and model number of that battery charger or end-use consumer product; and (4) an EPS that is in product class N but, nonetheless, meets the relevant standard set for direct operation EPSs (and bears the appropriate Roman numeral) need not be marked with an ''N'', with ''EPS–N'', nor with the manufacturer and model number of the associated device.

DOE seeks input on what distinguishing mark should appear on EPSs for certain security and life safety equipment. A recently enacted law amended EPCA to exclude these devices from the no-load mode efficiency standards. Public Law 111–360 (Jan. 4, 2011) (to be codified at 42 U.S.C. 6295(u)(3)). The exclusion applies to AC–AC EPSs manufactured before July 1, 2017, that have nameplate output of 20 watts or more, are certified as being designed to be connected to a security or life safety alarm or surveillance system component (as defined in the law), and are permanently marked with a distinguishing mark for such products as established within the Marking Protocol. No such distinguishing mark exists within the Marking Protocol, but DOE intends to work with EPA and other stakeholders to establish such a mark. The mark, which could be the word ''ACTIVE'' or an ''A'' in a circle, for example, would likely be required to appear adjacent to the appropriate Roman numeral. DOE welcomes input on what mark would be appropriate, where it should be located, and any other details related to how that mark should be presented on a given device.

Lastly, EPS efficiency markings can be useful in certain circumstances to help verify whether a given product complies with the relevant standards. To assist in ensuring that compliant products can be readily identified, DOE is also considering marking requirements for battery chargers. NRDC submitted a comment in November 2010, after the close of the preliminary analysis comment period, requesting that DOE consider such a marking protocol for battery chargers. (NRDC, No. 56) NRDC

[64] U.S. EPA, ''International Efficiency Marking Protocol for External Power Supplies,'' October 2008, available at Docket No. 62.

claimed that establishing an efficiency marking protocol for battery chargers would have several benefits, including creating a simple vocabulary for all stakeholders, facilitating enforcement, lowering the cost of compliance for industry by facilitating international adoption, and encouraging voluntary adoption of higher levels. NRDC proposed using Roman numerals, as is done for EPSs. To avoid confusion, the Roman numerals on battery chargers would appear next to the word ''BC'', as shown in Table IV–32, in contrast to the Roman numerals on EPSs, which stand alone. NRDC's comment also includes recommendations on where the mark should be located.

Consistent with this suggestion, DOE is considering adopting a marking protocol for battery chargers that would have ''BC III'' denote the battery charger standard levels adopted in the final rule. This marking would give other standards-setting bodies the option of defining a lower efficiency level (''BC II'') for use on BCs sold to consumers outside the United States and would reserve ''BC I'' for products that do not meet the criteria for the other (higher) marks. A similar approach was used when the efficiency marking protocol for EPSs was established. The formulas given for each of the battery charger product classes for BC Level III match the standards being proposed today and could change.

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Table IV-32 Proposed Efficiency Marking Protocol for Battery Chargers

Level	Description	Maximum Annual Energy Consumption†	
BC I	Used if no other criteria are met		
BC II	Less than Level III	TBD	
BC III	DOE standards (compliance date in 2013)	PC 1	3.04
		PC 2	$= 0.2095(E_{batt}^{*}) + 5.87$
		PC 3	For $E_{batt} < 9.74$ Wh, $= 4.68$ For $E_{batt} \geq 9.74$ Wh, $= 0.0933(E_{batt}) + 3.77$
		PC 4	For $E_{batt} < 9.71$ Wh, $= 9.03$ For $E_{batt} \geq 9.71$ Wh, $= 0.2411(E_{batt}) + 6.69$
		PC 5	For $E_{batt} < 355.18$ Wh, $= 20.06$ For $E_{batt} \geq 355.18$ Wh, $= 0.0219(E_{batt}) + 12.28$
		PC 6	For $E_{batt} < 239.48$ Wh $= 30.37$ For $E_{batt} \geq 239.48$ Wh $= 0.0495(E_{batt}) + 18.51$
		PC 7	$= 0.502(E_{batt}) + 4.53$
		PC 8	0.66
		PC 9	See Product Class 2, 3, or 4 depending upon battery voltage.
		PC 10	1.50
BC IV and higher	Reserved for future use	TBD	

† Annual energy consumption is determined using the DOE test procedure and compliance formulas. E_{batt} stands for battery energy.

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DOE is considering multiple approaches for determining where on the external housing of the battery charger the mark shall be placed. NRDC's proposal specifies where the mark shall be placed in cases where the battery charger has more than one housing, as described in Table IV–33. (NRDC, No. 56) DOE's concern with NRDC's proposal is the difficulty in accurately identifying and locating

charge control in a battery charger. Alternatively, DOE could give manufacturers the flexibility to choose where to place the mark. DOE expects that manufacturers will most often choose to place the mark on a cradle or charging base, if one is present, or on the end-use consumer product.

TABLE IV–33—PROPOSED LOCATION FOR BATTERY CHARGER MARKING

Form factor	Location of battery charger marking
Three separate housings	Charge control component.
Power supply and charge control together, battery separate	Power supply & charge control component.
Charge control and battery together, power supply separate	Charge control & battery component.

DOE is also considering other requirements for the battery charger mark. For example, DOE could require that the mark be placed on a nameplate or in an equally visible location or that the font size used for the mark be similar to that used for other markings on the product such as the UL and CE symbols. DOE is aware that the CEC also is considering establishing marking requirements for battery chargers and is following that process as it develops. If the CEC adopts marking requirements for battery chargers within the scope of today's notice, those requirements would be preempted by any future battery charger marking requirements adopted by DOE. Manufacturers would then have to transition from meeting the CEC's requirements to meeting DOE's requirements. Therefore, DOE would consider adopting the CEC's requirements to minimize the burden associated with that transition.

DOE recognizes that there are several challenges inherent in creating a marking protocol for battery chargers. First, it may prove difficult to specify unambiguously where the mark should be placed given the variety of form factors found in the marketplace. Second, in contrast to EPSs, some battery chargers may not have a nameplate to add a mark to. Third, in those cases where the mark is placed on an end-use consumer product containing a battery charger, it may be misinterpreted by consumers as an endorsement of that product. DOE welcomes comment on these issues, NRDC's proposal, and any other issues related to efficiency markings for battery chargers.

P. Reporting Requirements

For battery chargers and non-Class A external power supplies, DOE will establish certification, compliance, and enforcement provisions in a future rulemaking. This future rulemaking will outline the necessary information that manufacturers must provide in order to certify compliance with any energy conservation standards established by this rulemaking.

V. Analytical Results

The following section addresses the results from DOE's analyses with respect to potential energy efficiency standards for the various product classes examined as part of this rulemaking. Issues discussed include the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy efficiency standards for battery chargers and EPSs, and the standards levels that DOE is tentatively proposing in today's NOPR. Additional details regarding the analyses conducted by the agency are contained in the publicly available TSD supporting this proposal.

A. Trial Standard Levels

DOE analyzed the benefits and burdens of multiple TSLs for the products that are the subject of today's proposed rule. A description of each TSL DOE analyzed is provided below. DOE attempted to limit the number of TSLs considered for the NOPR by excluding efficiency levels that do not exhibit significantly different economic and/or engineering characteristics from the efficiency levels already selected as a TSL. While the NOPR presents only the results for those efficiency levels in TSL combinations, the TSD contains a more fulsome discussion and includes results for all efficiency levels that DOE examined.

1. External Power Supply TSLs

Table V–1 presents the TSLs for EPSs and the corresponding efficiency levels. DOE chose to analyze product class B directly and scale the results from the engineering analysis to product classes C, D, and E. As a result, the TSLs for these three product classes correspond to the TSLs for product class B. DOE created separate TSLs for the multiple-voltage (product class X) and high-power (product class H) EPSs to determine their standards. DOE did not analyze TSLs above the baseline CSL for product class N and instead proposes applying the baseline EISA 2007 standard to all EPSs in this product class, as discussed in section B below.

Table V-1 Trial Standard Levels for External Power Supplies

Product Class	Trial Standard Level		
	TSL 1	TSL 2	TSL 3
DC Output, Basic-Voltage (B)	CSL 2	CSL 3	CSL 4
DC Output, Low-Voltage (C)	Scaled Product Classes (Same CSLs as Product Class B)		
AC Output, Basic-Voltage (D)			
AC Output, Low-Voltage (E)			
Multiple Voltage (X)	CSL 1	CSL 2	CSL 3
High-Power (H)	CSL 2	CSL 3	CSL 4

For EPS product class B, DOE examined three TSLs corresponding to each candidate standard level of efficiency developed in the engineering analysis. TSL 1 is an intermediate level of performance above ENERGY STAR, which offers the greatest consumer NPV. TSL 2 is equivalent to the best-in-market CSL and represents an incremental rise in energy savings over TSL 1. TSL 3 is the max-tech level and corresponds to the greatest NES.

For product class X, DOE examined three TSLs above the baseline. TSL 1 is an intermediate level of performance above the baseline. TSL 2 is equivalent to the best-in-market CSL and corresponds to the maximum consumer NPV. TSL 3 is the max-tech level and corresponds to the greatest NES.

For product class H, DOE examined three TSLs above the baseline. TSL 1 corresponds to an intermediate level of efficiency. TSL 2 is the scaled best-in-market CSL and corresponds to the maximum consumer NPV. TSL 3 is the scaled max-tech level, which provides the highest NES.

2. Battery Charger TSLs

Table V–2 presents the TSLs and corresponding candidate standard levels for battery chargers. While DOE examined most product classes individually, there were two groups of product classes that use generally similar technology options and cover the exact same range of battery energies. Because of this situation, DOE grouped all three low-energy, non-inductive, product classes (*i.e.* 2, 3, and 4) together and examined the results. Similarly, DOE grouped the two medium energy product classes, product classes 5 and 6, together when it examined those results.

Table V-2 Trial Standard Levels for Battery Chargers

Product Class	Trial Standard Level			
	TSL 1	TSL 2	TSL 3	TSL 4
Low-Energy, Inductive (1)	CSL 1	CSL 2	CSL 3	-
Low-Energy, Low-Voltage (2)	CSL 1	CSL 2	CSL 3	CSL 4
Low-Energy, Med.-Voltage (3)	CSL 1	CSL 1	CSL 2	CSL 3
Low-Energy, High-Voltage (4)	CSL 1	CSL 1	CSL 2	CSL 3
Med.-Energy, Low-Voltage (5)	CSL 1	CSL 2	CSL 3	-
Med.-Energy, High-Voltage (6)	CSL 1	CSL 2	CSL 3	-
High-Energy (7)	CSL 1	CSL 2	-	-
Low-Voltage DC Input (8)	CSL 1	CSL 2	CSL 3	-
High-Voltage DC Input (9)	-	-	-	-
AC Input, AC Output (10)	CSL 1	CSL 2	CSL 3	-

For battery charger product class 1 (low-energy, inductive), DOE examined three trial standard levels corresponding to each candidate standard level developed in the engineering analysis. TSL 1 is an intermediate level of performance above the baseline. TSL 2 is equivalent to the best-in-market and corresponds to the maximum consumer NPV. TSL 3 is the max-tech level and corresponds to the greatest NES.

For its second set of TSLs, which covers product classes 2 (low-energy, low-voltage), 3 (low-energy, medium-voltage), and 4 (low-energy, high-voltage), DOE examined four TSLs of different combinations of the various efficiency levels found for each product class in the engineering analysis. In this grouping, TSL 1 is an intermediate efficiency level above the baseline for each product class and corresponds to the maximum consumer NPV. For 2 of the 3 product classes, TSL 2 corresponds to the same efficiency level, but for the third class, product class 2, TSL 2 represents an incremental efficiency level below best-in-market. TSL 3 corresponds to the best-in-market efficiency level for all product classes. Finally, TSL 4 corresponds to the max-tech efficiency level for all product classes and therefore, the maximum NES.

DOE's third set of TSLs corresponds to the grouping of product classes 5 (medium-energy, low-voltage) and 6 (medium-energy, high-voltage). For this grouping, three TSLs corresponding to different combinations of efficiency levels were examined. For both product classes, TSL 1 is an intermediate efficiency level above the baseline. TSL 2 corresponds to the best-in-market efficiency level for both product classes and is the level with the highest consumer NPV. Finally, TSL 3 corresponds to the max-tech efficiency level for both product classes and the maximum NES.

For product class 7 (high-energy), DOE examined only two TSLs because of the paucity of products available on the market. TSL 1 corresponds to an efficiency level equivalent to the best-in-market and maximizes consumer NPV is maximized. TSL 2 is the max-tech level and corresponds to the level with the maximum NES.

For product class 8 (low-voltage DC input), DOE examined three TSLs at incremental levels above the baseline. TSL 1 is the first incremental level between the baseline and best-in-market. Consumer NPV is maximized at this level. TSL 2 is the best-in-market efficiency level and is projected to yield higher NES levels over TSL 1. Finally, at TSL 3, or the max-tech efficiency level, NES is maximized.

For product class 9 (high-voltage DC input), DOE did not examine any TSLs in depth. Rather, when DOE completed its engineering analysis, it conducted its LCC analysis on the efficiency levels that had been developed and found that all efficiency levels above the baseline showed negative LCC savings. This fact,

combined with the minimal energy consumed per year for these devices, led DOE to propose an alternative standard level for these products. DOE's proposal for this product class is discussed in section V.B.2.f below.

For product class 10 (AC input, AC output), DOE examined three TSLs, each corresponding to an efficiency level developed in the engineering analysis. TSL 1 corresponds to an incremental level of performance above the baseline. TSL 2 is equivalent to what manufacturers stated would be equivalent to the best-in-market level. TSL 3, which DOE projects to yield maximized NPV and NES values, is equivalent to the max-tech efficiency level for product class 10.

B. Economic Justification and Energy Savings

As discussed in section II.A, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)) The following sections generally discuss how DOE is addressing each of those seven factors in this rulemaking. For further details and the results of DOE's analyses pertaining to economic justification, see sections IV and V of today's notice.

1. Economic Impacts on Individual Consumers

For individual consumers, measures of economic impact include the changes in LCC and the PBP associated with new or amended standards. The LCC, which is also separately specified as one of the seven factors to be considered in determining the economic justification for a new or amended standard (42 U.S.C. 6295(o)(2)(B)(i)(II)), is discussed in the following section. For consumers in the aggregate, DOE also calculates the net present value from a national perspective of the economic impacts on consumers over the forecast period used in a particular rulemaking.

a. Life-Cycle Cost and Payback Period

As in the preliminary analysis phase, DOE calculated the average LCC savings relative to the base case market efficiency distribution for each representative unit and product class. DOE's projections indicate that a new standard would affect different battery charger and EPS consumers differently, depending on the market segment to which they belong and their usage characteristics. Section IV.F discusses the inputs used for calculating the LCC and PBP. Inputs used for calculating the LCC include total installed costs, annual energy savings, electricity rates, electricity price trends, product lifetime, and discount rates.

The key outputs of the LCC analysis are average LCC savings for each product class for each considered efficiency level, relative to the base case, as well as a probability distribution of LCC reduction or increase. The LCC analysis also estimates, for each product class or representative unit, the fraction of customers for which the LCC will either decrease (net benefit), or increase (net cost), or exhibit no change (no impact) relative to the base case forecast. No impacts occur when the product efficiencies of the base case forecast already equal or exceed the considered efficiency level. Battery chargers and EPSs are used in applications that can have a wide range of operating hours. Battery chargers and EPSs that are used more frequently will tend to have a larger net LCC benefit than those that are used less frequently because of the large operating cost savings.

Another key output of the LCC analysis is the median payback period at each CSL. DOE presents the median payback period rather than the mean payback period because it is more robust in the presence of outliers in the data.[65] These outliers skew the mean payback period calculation but have little effect on the median payback period calculation. A small change in operating costs, which derive the denominator of the payback period calculation, can sometimes result in a very large payback period, which skews the mean payback period calculation. For example, consider a sample of PBPs of 2, 2, 2, and 20 years, where 20 years is an outlier. The mean PBP would return a value of 6.5 years, whereas the median PBP would return a value of 2 years. Therefore, DOE considers the median payback period, which is not skewed by occasional outliers. Table V–3 through Table V–5 show the results for the representative units and product classes analyzed for EPSs and battery chargers. Additional detail for these results, including frequency plots of the distributions of life-cycle costs and payback periods, are available in chapter 8 of the TSD.

Table V-3 LCC Savings and Payback Period for DC Output, Basic-Voltage External Power Supplies

	Weighted Average LCC Savings*2010$*]			Median Payback Period [*yrs*]		
Rep. Unit	**TSL 1**	**TSL 2**	**TSL 3**	**TSL 1**	**TSL 2**	**TSL 3**
2.5W AC-DC, Basic V	0.10	0.04	0.02	3.5	4.3	4.3
18W AC-DC, Basic V	0.68	0.69	(1.19)	1.2	3.1	8.1
60W AC-DC, Basic V	(0.33)	(0.45)	(1.38)	6.3	5.4	6.4
120W AC-DC, Basic V	0.60	0.61	(5.49)	1.4	1.9	9.1

For EPS product class B (basic-voltage, AC–DC, class A EPSs), each representative unit has a unique value for LCC savings and median PBP. The 2.5W representative unit has positive LCC savings at all TSLs considered, while the 60W representative unit has negative LCC savings at all TSLs. Both the 18W and 120W representative units have positive LCC savings through TSL 2, but turn negative at TSL 3.

[65] DOE notes that it uses the median payback period to reduce the effect of outliers on the data. This method, however, does not eliminate the outliers from the data.

Table V-4 LCC Savings and Payback Period for Non-Class A External Power Supplies

	Weighted Average LCC Savings [*2010$*]			Median Payback Period [*yrs*]		
Rep. Unit	**TSL 1**	**TSL 2**	**TSL 3**	**TSL 1**	**TSL 2**	**TSL 3**
203W Multiple Voltage	2.05	2.07	(3.09)	0.4	4.7	13.2
345W High-Power	124.82	129.08	92.96	0.0	0.2	2.5

The Non-Class A EPSs have varying LCC results at each TSL. See Table V–4. The 203W Multiple Voltage unit (product class X) has positive LCC savings through TSL 2. DOE notes that for this product class, the LCC savings remain largely the same for TSL 1 and 2 because the difference in LCC is approximately $0.01 and 95 percent of this market consists of purchased products that are already at TSL 1. Therefore, the effects are largely from the movement of the 5 percent of the market up from the baseline. The 345W High-Power unit (product class H) has positive LCC savings for each TSL. This projection is largely attributable to the installed price of the baseline unit, a linear switching device, which is more costly than higher efficiency switch-mode power devices, so as consumers move to higher efficiencies, the purchase price actually decreases, resulting in savings.

Table V-5 LCC Savings and Payback Period for Battery Chargers

	Weighted Average LCC Savings [*2010$*]				Median Payback Period [*yrs*]			
Rep. Unit	**TSL 1**	**TSL 2**	**TSL 3**	**TSL 4**	**TSL 1**	**TSL 2**	**TSL 3**	**TSL 4**
PC1 - Low E, Inductive	0.76	1.52	(2.87)	N/A	1.2	1.7	8.5	N/A
PC2 - Low E, Low-Voltage	0.16	(0.12)	(1.81)	(4.54)	0.5	5.2	8.5	16.9
PC3 - Low E, Medium-Voltage	0.35	0.35	(2.12)	(2.15)	3.9	3.9	21.9	21.5
PC4 - Low E, High-Voltage	0.43	0.43	(2.73)	(10.14)	3.0	3.0	13.8	37.6
PC5 - Medium E, Low-Voltage	9.69	33.79	(104.58)	N/A	1.7	0.0	53.4	N/A
PC6 - Medium E, High-Voltage	9.96	40.78	(86.76)	N/A	1.2	0.0	20.8	N/A
PC7 - High E	38.26	(127.30)	N/A	N/A	0.0	27.2	N/A	N/A
PC8 - DC-DC, <9V Input	3.04	(1.96)	(2.31)	N/A	0.0	0.0	24.9	N/A
PC9 - DC-DC, ≥9 V Input	(0.09)	(0.25)	0.00	N/A	7.2	8.8	0.0	N/A
PC10 - Low E, AC Out	6.41	7.26	8.30	N/A	1.3	1.4	1.5	N/A

The LCC results for battery chargers depend on the product class being considered. See Table V–5. For product class 1, LCC results are positive through TSL 2. For the low-energy product classes (PC2, 3, and 4), LCC results are generally positive through TSL 2, with the exception of product class 2, and become negative at TSL 3. The medium-energy product classes (PC5 and 6) are positive through TSL 2 and negative at TSL 3. The high-energy product class (PC7) has positive LCC savings of $38.26 at TSL 1, and then becomes negative at TSL 2. Product class 8 has positive LCC savings only at TSL 1, while product class 10 has positive LCC savings at each TSL (see entries for PC8 and PC10 in Table V–5).

b. Consumer Subgroup Analysis

Certain consumer subgroups may be disproportionately affected by standards. DOE performed LCC subgroup analyses in this NOPR for low-income consumers, small businesses, top tier marginal electricity price consumers, and consumers of specific applications. See section IV.F of this NOPR for a review of the inputs to the LCC analysis. The following discussion presents the most significant results from the LCC subgroup analysis.

Low-Income Consumers

For low-income consumers, the LCC impacts and payback periods are different than for the general population. This subgroup considers only the residential sector, and uses an adjusted electricity price from the reference case scenario. DOE found that low-income consumers below the poverty line typically paid electricity prices that were 0.2 cents per kWh lower than the general population. To account for this difference, DOE adjusted electricity prices by a factor of 0.9814 to derive electricity prices for this subgroup. Table V–6 through Table V–8 show the LCC impacts and payback

periods for low-income consumers purchasing EPSs and battery chargers.

The LCC savings and PBPs of low-income consumers is similar to that of the total population of consumers. In general, low-income consumers experience slightly reduced LCC savings, particularly in product classes dominated by residential applications. However, product classes with a large proportion of commercial applications experience less of an effect under the low-income consumer scenario, which is specific to the residential sector, and sometimes have greater LCC savings than the reference case results. None of the changes in LCC savings move a TSL from positive to negative LCC savings, or vice versa.

Table V-6 DC Output, Basic-Voltage External Power Supplies: Low-Income Consumer Subgroup

	Weighted Average LCC Savings [*2010$*]			Median Payback Period [*yrs*]		
Rep. Unit	**TSL 1**	**TSL 2**	**TSL 3**	**TSL 1**	**TSL 2**	**TSL 3**
2.5W AC-DC, Basic V	0.10	0.04	0.01	3.5	4.4	4.4
18W AC-DC, Basic V	0.69	0.70	(1.19)	1.2	3.4	9.8
60W AC-DC, Basic V	(0.29)	(0.35)	(1.19)	6.4	5.3	6.3
120W AC-DC, Basic V	0.65	0.68	(5.32)	1.3	1.8	8.8

Table V-7 Non-Class A External Power Supplies: Low-Income Consumer Subgroup

	Weighted Average LCC Savings [*2010$*]			Median Payback Period [*yrs*]		
Rep. Unit	**TSL 1**	**TSL 2**	**TSL 3**	**TSL 1**	**TSL 2**	**TSL 3**
203W Multiple-Voltage	2.00	2.01	(3.20)	0.4	4.8	13.5
345W High-Power	122.51	126.61	90.23	0.0	0.4	4.3

Table V-8 Battery Chargers: Low-Income Consumer Subgroup

	Weighted Average LCC Savings [*2010$*]				Median Payback Period [*yrs*]			
Rep. Unit	**TSL 1**	**TSL 2**	**TSL 3**	**TSL 4**	**TSL 1**	**TSL 2**	**TSL 3**	**TSL 4**
PC1 - Low E, Inductive	0.74	1.47	(2.94)	N/A	1.3	1.7	8.6	N/A
PC2 - Low E, Low-Voltage	0.15	(0.16)	(1.87)	(4.60)	0.5	5.5	8.7	17.2
PC3 - Low E, Medium-Voltage	0.31	0.31	(2.21)	(2.25)	4.4	4.4	22.4	22.4
PC4 - Low E, High-Voltage	0.61	0.61	(2.79)	(10.28)	3.2	3.2	12.3	43.1
PC5 - Medium E, Low-Voltage	9.47	33.26	(105.27)	N/A	1.8	0.0	54.5	N/A
PC6 - Medium E, High-Voltage	9.72	40.06	(87.83)	N/A	1.3	0.0	21.2	N/A
PC7 - High E	39.20	(135.53)	N/A	N/A	0.0	126.6	N/A	N/A
PC8 - DC-DC, <9V Input	3.05	(1.93)	(2.29)	N/A	0.0	0.0	26.6	N/A
PC9 - DC-DC, ≥9 V Input	(0.09)	(0.25)	0.00	N/A	7.2	8.8	0.0	N/A
PC10 - Low E, AC Out	6.24	7.08	8.08	N/A	1.3	1.4	1.5	N/A

Small Businesses

For small business customers, the LCC impacts and payback periods are different than for the general population. This subgroup considers only the commercial sector, and uses an adjusted discount rate from the reference case scenario. DOE found that small businesses typically have a cost of capital that is 4.48 percent higher than the industry average, which was applied to the discount rate for the small business consumer subgroup.

The small business consumer subgroup LCC results are not directly comparable to the reference case LCC results because this subgroup only considers commercial applications. In the reference case scenario, the LCC results are strongly influenced by the

presence of residential applications, which typically comprise the majority of application shipments. For EPS product class B, the LCC savings for the 2.5W representative unit become negative at TSL 2 and 3 under the small business scenario, but none of the savings for other representative units change from positive to negative, or vice versa. Similarly, none of the battery charger product classes that were positive in the reference case become negative in the small business subgroup analysis, and vice versa. This observation indicates that small business consumers would experience similar LCC impacts as the general population.

Table V–9 and Table V–10 show the LCC impacts and payback periods for small businesses purchasing EPSs and battery chargers. DOE did not identify any commercial applications for Non-Class A EPSs, and, consequently, did not evaluate these products as part of the small business consumer subgroup analysis.

Table V-9 DC Output, Basic-Voltage External Power Supplies: Small Business Consumer Subgroup

	Weighted Average LCC Savings [*2010$*]			Median Payback Period [*yrs*]		
Rep. Unit	**TSL 1**	**TSL 2**	**TSL 3**	**TSL 1**	**TSL 2**	**TSL 3**
2.5W AC-DC, Basic V	0.03	(0.04)	(0.08)	4.4	5.0	5.0
18W AC-DC, Basic V	0.44	0.32	(1.81)	1.1	2.8	6.9
60W AC-DC, Basic V	(0.46)	(0.73)	(1.93)	7.1	6.0	7.2
120W AC-DC, Basic V	0.46	0.45	(5.98)	1.4	2.0	9.2

Table V-10 Battery Chargers: Small Business Consumer Subgroup

	Weighted Average LCC Savings [*2010$*]				Median Payback Period [*yrs*]			
Rep. Unit	**TSL 1**	**TSL 2**	**TSL 3**	**TSL 4**	**TSL 1**	**TSL 2**	**TSL 3**	**TSL 4**
PC1 - Low E, Inductive*	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
PC2 - Low E, Low-Voltage	0.18	(0.18)	(1.88)	(4.66)	0.5	4.4	8.4	15.4
PC3 - Low E, Medium-Voltage	1.08	1.08	(0.85)	(0.75)	1.2	1.2	4.7	4.6
PC4 - Low E, High-Voltage	0.06	0.06	(2.82)	(10.18)	2.3	2.3	17.0	34.8
PC5 - Medium E, Low-Voltage*	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
PC6 - Medium E, High-Voltage*	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
PC7 - High E	37.40	(128.58)	N/A	N/A	0.0	27.2	N/A	N/A
PC8 - DC-DC, <9V Input	3.00	(2.00)	(2.36)	N/A	0.0	0.0	10.9	N/A
PC9 - DC-DC, ≥9 V Input*	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
PC10 - Low E, AC Out	3.71	4.14	4.65	N/A	1.5	1.7	1.8	N/A

* These product classes do not contain any commercial applications, so the small business consumer subgroup is not applicable.

Top Tier Marginal Electricity Price Consumers

For top tier marginal electricity price consumers, the LCC impacts and payback periods are different than for the general population. The analyses for this subgroup consider a weighted-average of the residential and commercial sectors, and uses an adjusted electricity price from the reference case scenario. DOE used an upper tier inclined marginal block rate for the electricity price in the residential and commercial sectors, resulting in a price of $0.310 and $0.225 per kWh, respectively. Table V–11 through Table V–13 show the LCC impacts and payback periods for top tier marginal electricity price consumers purchasing EPSs and battery chargers.

Consumers in the top tier marginal electricity price bracket experience greater LCC savings than those in the reference case scenario. This result occurs because these consumers pay more for their electricity than other consumers, and, therefore, experience greater savings when using products

that are more energy efficient. This subgroup analysis changed many of the negative LCC savings results to positive LCC savings. Some product classes and representative units still have negative LCC savings, which indicates that these product classes have increasing installed costs (purchase price plus installation costs, the latter of which are assumed to be zero) at higher TSLs that cannot be overcome through operating cost savings using top tier marginal electricity prices.

Table V-11 DC Output, Basic-Voltage External Power Supplies: Top Tier Marginal Electricity Price Consumer Subgroup

	Weighted Average LCC Savings [*2010$*]			Median Payback Period [*yrs*]		
Rep. Unit	**TSL 1**	**TSL 2**	**TSL 3**	**TSL 1**	**TSL 2**	**TSL 3**
2.5W AC-DC, Basic V	0.86	0.97	1.08	1.4	1.7	1.7
18W AC-DC, Basic V	2.14	3.19	3.54	0.4	1.2	3.2
60W AC-DC, Basic V	0.73	1.51	2.45	2.1	1.9	2.2
120W AC-DC, Basic V	2.05	2.38	(0.28)	0.5	0.6	3.8

Table V-12 Non-Class A External Power Supplies: Top Tier Marginal Electricity Price Consumer Subgroup

	Weighted Average LCC Savings [*2010$*]			Median Payback Period [*yrs*]		
Rep. Unit	**TSL 1**	**TSL 2**	**TSL 3**	**TSL 1**	**TSL 2**	**TSL 3**
203W Multiple Voltage	6.02	6.62	6.25	0.1	1.5	4.2
345W High-Power	313.34	331.76	318.23	0.0	0.0	0.2

Table V-13 Battery Chargers: Top Tier Marginal Electricity Price Consumer Subgroup

	Weighted Average LCC Savings [*2010$*]				Median Payback Period [*yrs*]			
Rep. Unit	**TSL 1**	**TSL 2**	**TSL 3**	**TSL 4**	**TSL 1**	**TSL 2**	**TSL 3**	**TSL 4**
PC1 - Low E, Inductive	2.55	5.71	2.86	N/A	0.4	0.5	2.7	N/A
PC2 - Low E, Low-Voltage	0.46	1.13	0.83	(1.75)	0.2	1.8	3.0	6.0
PC3 - Low E, Medium-Voltage	1.47	1.47	1.60	1.60	1.4	1.4	7.1	7.2
PC4 - Low E, High-Voltage	1.83	1.83	0.22	(6.34)	1.0	1.0	6.4	14.7
PC5 - Medium E, Low-Voltage	29.35	79.29	(44.77)	N/A	0.9	0.0	21.3	N/A
PC6 - Medium E, High-Voltage	30.62	102.95	6.30	N/A	0.4	0.0	6.7	N/A
PC7 - High E	49.74	(94.46)	N/A	N/A	0.0	13.6	N/A	N/A
PC8 - DC-DC, <9V Input	3.13	(1.57)	(1.89)	N/A	0.0	0.0	8.1	N/A
PC9 - DC-DC, ≥9 V Input	(0.09)	(0.25)	0.00	N/A	7.2	8.8	0.0	N/A
PC10 - Low E, AC Out	20.43	23.53	27.27	N/A	0.4	0.4	0.5	N/A

Consumers of Specific Applications

DOE performed an LCC and PBP analysis on every application within each representative unit and product class. This subgroup analysis used the application's specific inputs for lifetime, markups, base case market efficiency distribution, and UEC. Many applications in each representative unit or product class experienced LCC impacts and payback periods that were different from the average results across the representative unit or product class. Because of the large number of applications considered in the analysis,

some of which span multiple representative units or product classes, DOE did not present application-specific LCC results here. Detailed results on each application are available in chapter 11 of the TSD.

For EPS product class B, the application-specific LCC results indicate that most applications will experience similar levels of LCC savings as the representative unit's average LCC savings. The 2.5W representative unit has positive LCC savings for each TSL, but infrequently charged applications, such as beard and moustache trimmers (among others), experience negative LCC savings. Similarly, the 18W representative unit has projected positive LCC savings through TSL 2, but other applications using EPSs, such as portable DVD players and camcorders, have negative savings. For the 60W representative unit, all applications follow the shipment-weighted average trends, except EPSs used in sleep apnea machines, which have positive LCC savings at each TSL. The same is true for the 120W representative unit, except for EPSs used in portable O_2 concentrator applications, which are projected to yield negative LCC results for all TSLs.

For battery charger product classes, DOE noted similar trends where less frequently used applications experienced lower LCC savings. For product class 2, LCC savings are negative beyond TSL 1, but frequently used applications within that class—e.g., answering machines, cordless phones, and home security systems—experience positive LCC savings. The top three product class 3 applications (which account for over 50 percent of total shipments) have negative LCC savings and contribute to the negative LCC savings of the product class average. However, some applications have significantly positive LCC savings, such as handheld vacuums, LAN equipment, stick vacuums, and universal battery chargers, which together comprise 15 percent of the total shipments in PC3. Product class 4 (e.g., notebooks and netbooks) have no impacts at TSL 1 or TSL 2 because these products already use battery charger technology above the baseline efficiency level. In the other battery charger product classes, the disparate applications tend to experience similar LCC savings. See chapter 11 of the TSD for further detail.

c. Rebuttable Presumption Payback

As discussed in section III.D.2, EPCA provides a rebuttable presumption where, in essence, an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. However, DOE routinely conducts a full economic analysis that considers the full range of impacts, including those to the customer, manufacturer, Nation, and environment, as required under 42 U.S.C. 6295(o)(2)(B)(i) and 42 U.S.C. 6316(e)(1). The results of this analysis serve as the basis for DOE to evaluate definitively the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification).

For EPSs and battery chargers, energy savings calculations in the LCC and PBP analyses used both the relevant test procedures as well as the relevant usage profiles. DOE's recent changes to the test procedures did not affect any characteristics that impact the payback period calculation. Because DOE calculated payback periods using a methodology consistent with the rebuttable presumption test for EPSs and battery chargers in the LCC and payback period analyses, DOE did not perform a stand-alone rebuttable presumption analysis, as it was already embodied in the LCC and PBP analyses.

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of new and amended energy conservation standards on manufacturers of EPSs and battery chargers. The section below describes the expected impacts on manufacturers at each potential TSL.

a. Cash-Flow Analysis Results

The INPV results refer to the difference in industry value between the base case and the standards case, which DOE calculated by summing the discounted industry cash flows from the base year (2011) through the end of the analysis period. The discussion also notes the difference in cash flow between the base case and the standards case in the year before the compliance date of potential new and amended energy conservation standards. This figure provides a proxy for the magnitude of the required conversion costs, relative to the cash flow generated by the industry in the base case.

i. EPS Cash Flow Impacts

For EPSs, the MIA describes the impacts on EPS ODMs. Each set of results below shows two tables of INPV impacts on the ODM. The first table reflects the lower (less severe) bound of impacts and the second represents the upper (more severe) bound. To evaluate this range of cash-flow impacts on EPS manufacturers, DOE modeled two different scenarios using different markup assumptions. These assumptions correspond to the bounds of a range of market responses that DOE anticipates could occur in the standards case. Each scenario results in a unique set of cash flows and corresponding industry value at each TSL.

To assess the lower (less severe) end of the range of potential impacts, DOE modeled the flat markup scenario. The flat markup scenario assumes that in the standards case manufacturers would be able to pass the higher production costs required to manufacture more efficient products on to their customers. To assess the higher (more severe) end of the range of potential impacts, DOE modeled the preservation of operating profit markup scenario in which higher energy conservation standards result in lower manufacturer markups. DOE used the main NIA shipment scenario for both the lower- and higher-bound MIA scenarios that were used to characterize the potential INPV impacts.

Product Classes B, C, D, and E

Table V–14 and Table V–15 present the projected results for product classes B, C, D, and E under the flat and preservation of operating profit markup scenarios. DOE examined four representative units in product class B and scaled the results to product classes C, D, and E using the most appropriate representative unit for each product class.

Table V-14 Manufacturer Impact Analysis for Product Classes B, C, D, and E – Flat Markup Scenario

	Units	Base Case	Trial Standard Level		
			1	2	3
INPV	(2010$ millions)	231.9	193.0	196.7	249.8
Change in INPV	(2010$ millions)	-	(38.9)	(35.2)	17.9
	(%)	-	-16.8%	-15.2%	7.7%
Product Conversion Costs	(2010$ millions)	-	29.1	34.5	36.3
Capital Conversion Costs	(2010$ millions)	-	32.2	38.1	40.1
Total Conversion Costs	(2010$ millions)	-	61.4	72.6	76.4

Table V-15 Manufacturer Impact Analysis for Product Classes B, C, D, and E – Preservation of Operating Profit Markup Scenario

	Units	Base Case	Trial Standard Level		
			1	2	3
INPV	(2010$ millions)	231.9	169.4	150.5	108.4
Change in INPV	(2010$ millions)	-	(62.5)	(81.4)	(123.5)
	(%)	-	-26.9%	-35.1%	-53.2%
Product Conversion Costs	(2010$ millions)	-	29.1	34.5	36.3
Capital Conversion Costs	(2010$ millions)	-	32.2	38.1	40.1
Total Conversion Costs	(2010$ millions)	-	61.4	72.6	76.4

At TSL 1, DOE estimates impacts on INPV to range from −$38.9 million to −$62.5 million, or a change in INPV of −16.8 percent to −26.9 percent. At this level, industry free cash flow is estimated to decrease by approximately 179.2 percent to −$10.8 million, compared to the base-case value of $13.6 million in the year leading up to when the new and amended energy conservation standards would need to be met.

At TSL 1, manufacturers of product class B, C, D, and E EPSs face a moderate loss in INPV. For these product classes, the required efficiencies at TSL 1 correspond to an intermediate level above the ENERGY STAR 2.0 levels but below the best in market efficiencies. The conversion costs are a major contribution of the decrease in INPV because the vast majority of the product class B, C, D, and E EPS shipments fall below CSL 2. Manufacturers will incur product and capital conversion costs of approximately $61.4 million at TSL 1. In 2013, approximately 84 percent of product class B, C, D, and E shipments are projected to fall below the proposed amended energy conservation standards. In addition, 92 percent of the products for the 2.5W representative unit are projected to fall below the proposed efficiency standard, and would likely require more substantial conversion costs because meeting the efficiency standard would require 2.5W representative units to switch from linear to switch mode technology. This change would increase the conversion costs for these 2.5W representative units, which account for approximately a quarter of all the product class B, C, D, and E shipments.

At TSL 1, the MPC increases 45 percent for the 2.5W representative units (a representative unit for product class B and all shipments of product classes C and E), 5 percent for the 18 Watt representative units (a representative unit for product class B and all shipments of product class D), 14 percent for the 60W representative units, and 3 percent for the 120W representative units over the baseline. The conversion costs are significant enough to cause a moderately negative industry impact even if the incremental change in MPCs is fully passed on to OEMs. Impacts are more significant under the preservation of operating profit scenario because under this scenario manufacturers would be unable to pass on the full increase product cost.

At TSL 2, DOE estimates impacts on INPV to range from −$35.2 million to −$81.4 million, or a change in INPV of −15.2 percent to −35.1 percent. At this level, industry free cash flow is estimated to decrease by approximately 212.1 percent to −$15.2 million, compared to the base-case value of $13.6 million in the year before the compliance date.

TSL 2 represents the best-in-market efficiencies for product class B, C, D, and E EPSs. The difference in conversion costs and incremental production costs at TSL 2 make the INPV impacts slightly better than TSL 1 in the flat markup scenario and worse under the preservation of operating profit scenario. The product conversion costs increase by $5.4 million and the capital conversion costs increase by $5.9 million from TSL 1 because the vast majority of current products fall below the efficiency requirements at TSL 2. Also, at TSL 2, the MPC increases 60 percent for the 2.5W representative units (a representative unit for product class B and all shipments of product classes C and E), 18 percent for the 18 Watt representative units (this is a representative unit for product class B and all shipments of product class D), 22 percent for the 60W representative units, and 4 percent for the 120W representative units over the baseline. However, the similar conversion costs and relatively minor additional incremental costs make the industry impacts at TSL 2 similar to those at TSL 1.

At TSL 3, DOE estimates impacts on INPV to range from $17.9 million to −$123.5 million, or a change in INPV of 7.7 percent to −53.2 percent. At this level, industry free cash flow is estimated to decrease by approximately 223.0 percent to −$16.7 million, compared to the base-case value of

$13.6 million in the year before the compliance date.

TSL 3 represents the max-tech CSL for product class B, C, D, and E EPSs. At TSL 3, DOE modeled a wide range of industry impacts because the very large increases in per-unit costs lead to a wide range of potential impacts depending on who captures the additional value in the distribution chain. None of the existing products on the market meet the efficiency requirements at TSL 3. However, since most of the products at TSL 2 also fall below the standard level, there is only a slight difference between the conversion costs at TSL 2 and TSL 3. The different INPV impacts occur due to the large changes in incremental MPCs at the max-tech level. At TSL 3, the MPC increases 69 percent for the 2.5W representative unit (this is a representative unit for product class B and all shipments for product classes C and E), 80 percent for the 18 Watt representative units (this is a representative unit for product class B and all shipments for product class D), 46 percent for the 60W representative units, and 53 percent for the 120W representative units over the baseline. If manufacturers are able to fully pass on these costs to OEMs (the flat markup scenario), the increase in cash flow from operations is enough to overcome the conversion costs to meet the max-tech level and INPV increases slightly. However, if the manufacturers are unable to pass on these costs and only maintain the current operating profit (the preservation of operating profit markup scenario), there is a large, negative impact on INPV, because substantial increases in working capital drain operating cash flow. The conversion costs associated with switching the entire market, the large increase in incremental MPCs, and the extreme pressure from OEMs to keep product prices down make it more likely that ODMs will not be able to fully pass on these costs to OEMs and the ODMS would face a substantial loss instead of a slight gain in INPV at TSL 3.

Product Class X

Table V–16 and Table V–17 below present the projected results for product class X under the flat and preservation of operating profit markup scenarios.

Table V-16 Manufacturer Impact Analysis for Product Class X EPS – Flat Markup Scenario

	Units	Base Case	Trial Standard Level		
			1	2	3
INPV	(2010$ millions)	44.1	43.7	32.2	39.6
Change in INPV	(2010$ millions)	-	(0.4)	(12.0)	(4.6)
	(%)	-	-1.0%	-27.1%	-10.3%
Product Conversion Costs	(2010$ millions)	-	0.3	6.9	6.9
Capital Conversion Costs	(2010$ millions)	-	0.4	7.6	7.6
Total Conversion Costs	(2010$ millions)	-	0.7	14.4	14.4

Table V-17 Manufacturer Impact Analysis for Product Class X EPS – Preservation of Operating Scenario

	Units	Base Case	Trial Standard Level		
			1	2	3
INPV	(2010$ millions)	44.1	43.4	31.4	26.3
Change in INPV	(2010$ millions)	-	(0.7)	(12.8)	(17.9)
	(%)	-	-1.7%	-28.9%	-40.5%
Product Conversion Costs	(2010$ millions)	-	0.3	6.9	6.9
Capital Conversion Costs	(2010$ millions)	-	0.4	7.6	7.6
Total Conversion Costs	(2010$ millions)	-	0.7	14.4	14.4

At TSL 1, DOE estimates impacts on INPV to range from −$0.4 million to −$0.7 million, or a change in INPV of −1.0 percent to −1.7 percent. At this level, industry free cash flow is estimated to decrease by approximately 10.9 percent to $2.3 million, compared to the base-case value of $2.6 million in the year before the compliance date.

At TSL 1, manufacturers of product class X face a very slight decline in INPV because most of the market already meets TSL 1. The total conversion costs are approximately $0.7 million. Conversion costs are low because 95 percent of the products already meet the TSL 1 efficiency requirements.

At TSL 2, DOE estimates impacts on INPV to range from −$12.0 million to −$12.8 million, or a change in INPV of −27.1 percent to −28.9 percent. At this level, industry free cash flow is estimated to decrease by approximately 218.6 percent to −$3.1 million, compared to the base-case value of $2.6 million in the year leading up to when the new energy conservation standards would need to be met.

At TSL 2, manufacturers face a more noticeable loss in industry value. DOE estimates that manufacturers will incur total product and capital conversion costs of $14.4 million at TSL 2. The conversion costs increase at TSL 2 because the entire market falls below the efficiency requirements at TSL 2. However, the total impacts are also driven by the incremental MPCs at TSL 2. At TSL 2, the MPC increases 16 percent over the baseline. Therefore, the projected changes in INPV under both the flat and preservation of operating profit markup scenarios are similar.

At TSL 3, DOE estimates impacts on INPV to range from −$4.6 million to

−$17.9 million, or a change in INPV of −10.3 percent to −40.5 percent. At this level, industry free cash flow is estimated to decrease by approximately 218.6 percent to $3.1 million, compared to the base-case value of $2.6 million in the year before the compliance date.

TSL 3 could result in substantial impacts on INPV. As with TSL 2, the entire market falls below the required efficiency at TSL 3 and total industry conversion costs are also $14.4 million. However, the main difference at TSL 3 is the increase in the MPC. At TSL 3, the MPC increases 46 percent over the baseline. If the ODM can pass on the higher price of these products to the OEM at TSL 3, the decline in INPV is not severe. However, if ODMs cannot pass on these higher MPCs to OEMs, the loss in INPV is much more substantial.

Product Class H

Table V–18 and Table V–19 present the projected results for product class H under the flat and preservation of operating profit markup scenarios.

Table V-18 Manufacturer Impact Analysis for Product Class H EPS – Flat Markup Scenario

	Units	Base Case	Trial Standard Level		
			1	2	3
INPV	(2010$ millions)	0.11	0.06	0.06	0.08
Change in INPV	(2010$ millions)	-	(0.05)	(0.05)	(0.03)
	(%)	-	-45.5%	-44.0%	-24.4%
Product Conversion Costs	(2010$ millions)	-	0.02	0.02	0.02
Capital Conversion Costs	(2010$ millions)	-	0.02	0.02	0.02
Total Conversion Costs	(2010$ millions)	-	0.05	0.05	0.05

Table V-19 Manufacturer Impact Analysis for Product Class H EPS – Preservation of Operating Profit Markup Scenario

	Units	Base Case	Trial Standard Level		
			1	2	3
INPV	(2010$ millions)	0.11	0.07	0.07	0.06
Change in INPV	(2010$ millions)	-	(0.04)	(0.04)	(0.05)
	(%)	-	-32.7%	-33.8%	-47.3%
Product Conversion Costs	(2010$ millions)	-	0.02	0.02	0.02
Capital Conversion Costs	(2010$ millions)	-	0.02	0.02	0.02
Total Conversion Costs	(2010$ millions)	-	0.05	0.05	0.05

At TSL 1, DOE estimates impacts on INPV to range −$0.04 million to −0.05 million, or a change in INPV of −32.7 percent to −45.5 percent. At this level, industry free cash flow is estimated to decrease by approximately 284.4 percent to −$0.01 million, compared to the base-case value of $0.01 million in the year before the compliance date.

At TSL 1, product class H manufacturers face a significant relative loss in industry value. The base case industry value of $100,000 is low and since DOE estimates that total conversion costs at TSL 1 would be approximately $50,000, the conversion costs represent a substantial portion of total industry value. The conversion costs are high relative to the base case INPV because the entire market in 2013 is projected to fall below an efficiency standard set at TSL 1. This means that all products in product class H would have to be redesigned to meet the efficiency level at TSL 1, leading to total conversion costs that are large relative to the base case industry value. In addition, the MPC at TSL 1 declines by 21 percent compared to the baseline since the switching technology that would be required to meet this efficiency level is less costly to manufacture than baseline products that use linear technology. This situation results in a lower MSP and lower revenues for manufacturers of baseline products, which exacerbates the impacts on INPV from new energy conservation standards for these products.

At TSL 2, DOE estimates impacts on INPV to range from −0.04 million to −0.05 million, or a change in INPV of −33.8 percent to −44.0 percent. At this level, industry free cash flow is estimated to decrease by approximately 284.4 percent to −$0.01 million, compared to the base-case value of $0.01 million in the year before the compliance date.

The impacts on INPV at TSL 2 are similar to TSL 1. The conversion costs are the same since the entire market in 2013 would fall below the required efficiency at both TSL 1 and TSL 2. Also, the MPC is projected to decrease by 19 percent at TSL 2 compared to the baseline, which is similar to the 21 percent decrease at TSL 1. Overall, the similar conversion costs and lower industry revenue for the minimally compliant products make the INPV impacts at TSL 2 similar to TSL 1.

At TSL 3, DOE estimates impacts on INPV to range from −$0.03 million to −0.05 million, or a change in INPV of −24.4 percent to −47.3 percent. At this level, industry free cash flow is estimated to decrease by approximately 284.4 percent to −$0.01 million, compared to the base-case value of $0.01 million in the year leading up to when the new energy conservation standards would need to be met.

Impacts on INPV range from moderately to substantially negative at TSL 3. As with TSL 1 and TSL 2, the entire market falls below the required efficiency and the total industry

conversion costs estimated by DOE remain at $50,000. However, the MPC increases at TSL 3 relative to the estimated cost of the baseline unit and changes the possible impacts on INPV at TSL 3. If ODMs can fully pass on the higher production cost of these products to the OEM at TSL 3, the decline in INPV is less severe. However, if the ODM cannot pass on these higher MPC to OEM then the loss in INPV is much more substantial.

ii. Battery Charger Cash Flow Impacts

DOE reports INPV impacts at each TSL for the six product class groupings below. When appropriate, DOE also discusses the results for groups of related applications that would experience impacts significantly different from the overall product class group to which they belong.

In general, two major factors drive the INPV results: (1) The relative difference between a given application's MSP and the incremental cost of improving its battery charger; and (2) the dominant base case battery charger technology that a given application utilizes, which is approximated by the application's efficiency distribution.

With respect to the first point, the higher the MSP of the application relative to the battery charger cost, the lower the impacts of battery charger standards on OEMs of the application. For example, an industry that sells an application for $500 would be less affected by a $2 increase in battery charger costs than one that sells its application for $10. On the second point regarding base case efficiency distribution, some industries, such as producers of laptop computers, already incorporate highly efficient battery chargers. Therefore, a higher standard would be unlikely to impact the laptop industry as it would other applications using baseline technology in the same product class.

As discussed in section IV.I, DOE analyzed three markup scenarios—constant price, pass through, and flat markup. These scenarios were described earlier. The constant price scenario analyzes the situation in which application manufacturers are unable to pass on *any* incremental costs of more efficient battery chargers to their customers. This scenario generally results in the most significant negative impacts [66] because no incremental costs added to the application—whether driven by higher battery charger component costs or depreciation of required capital investments—can be recouped.

In the pass through scenario, DOE assumes that manufacturers are able to pass the incremental costs of more efficient battery chargers through to their customers, but not with any markup to cover overhead and profit. Therefore, though less severe than the constant price scenario in which manufacturers absorb all incremental costs, this scenario results in negative cash flow impacts due to margin compression and greater working capital requirements.

Finally, DOE considers a flat markup scenario to analyze the upper bound (most positive) of profitability impacts.[67] In this scenario, manufacturers are able to maintain their base case gross margin, as a percentage of revenue, at higher CSLs, despite the higher product costs associated with more efficient battery chargers. In other words, manufacturers can fully pass on—and mark up—the higher incremental product costs associated with more efficient battery chargers.

Product Class 1

The following tables (Table V–20 through Table V–23) summarize information related to the analysis performed to project the potential impacts on product class 1 battery charger manufacturers.

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[66] Notably, this is not the case with negative sloping cost-efficiency curves. When a higher efficiency level can be achieved at a lower product cost, the constant price scenario yields positive impacts because larger margins are realized by the manufacturer on each unit produced.

[67] While the Flat Markup scenario typically results in the most positive impacts of any scenario, a negatively sloping cost-efficiency curve will yield the opposite effect. When a higher efficiency level can be achieved at a lower product cost, the margin on each unit produced is lower, in absolute terms, in the Flat Markup scenario. This effect leads to lower operating profit, cash flow, and INPV.

Table V-20 Applications in Product Class 1

Product Class 1
Rechargeable Toothbrushes
Rechargeable Water Jets

Table V-21 Cash Flow Results – Product Class 1 – Flat Markup Scenario

	Units	Base Case	Trial Standard Level		
			1	2	3
INPV	2010$ Millions	491	492	493	520
Change in INPV	2010$ Millions	-	1	1	29
	(%)	-	0.1%	0.3%	5.9%
Product Conversion Costs	2010$ Millions	-	0.8	1.9	4.3
Capital Conversion Costs	2010$ Millions	-	0.0	1.8	2.0
Total Investment Required	2010$ Millions	-	0.8	3.7	6.3

Table V-22 Cash Flow Results – Product Class 1 – Pass Through Markup Scenario

	Units	Base Case	Trial Standard Level		
			1	2	3
INPV	2010$ Millions	491	479	461	318
Change in INPV	2010$ Millions	-	(12)	(31)	(173)
	(%)	-	-2.5%	-6.2%	-35.3%
Product Conversion Costs	2010$ Millions	-	0.8	1.9	4.3
Capital Conversion Costs	2010$ Millions	-	0.0	1.8	2.0
Total Investment Required	2010$ Millions	-	0.8	3.7	6.3

Table V-23 Cash Flow Results – Product Class 1 – Constant Price Markup Scenario

	Units	Base Case	Trial Standard Level		
			1	2	3
INPV	2010$ Millions	491	450	390	51
Change in INPV	2010$ Millions	-	(41)	(101)	(441)
	(%)	-	-8.4%	-20.6%	-89.7%
Product Conversion Costs	2010$ Millions	-	0.8	1.9	4.3
Capital Conversion Costs	2010$ Millions	-	0.0	1.8	2.0
Total Investment Required	2010$ Millions	-	0.8	3.7	6.3

Product class 1 has only two applications: Rechargeable toothbrushes and water jets. Rechargeable toothbrushes represent 99.9 percent of the product class 1 shipments. DOE found the majority of these models include nickel-cadmium (Ni-Cd) battery chemistries, although products with NiMH and Li-ion chemistries exist in the market. More than three quarters of market shipments are at the baseline CSL. However, the efficiency distribution is not necessarily indicative of the distribution of retail price points. During interviews, manufacturers indicated that energy efficiency was not a primary selling point in this market. As a consequence, manufacturers expect that stringent standards would likely impact the low-end of the market, where price competition is most fierce and retail selling prices are lowest.

The incremental costs of meeting TSL 1 and TSL 2, which represent CSL 1 and CSL 2 for product class 1, respectively, are relatively minor compared to the average application MSP of $58.36. While most applications will have to be altered at these TSLs, the relatively small increase in battery charger costs do not greatly impact industry cash flow even if none of these incremental costs can be passed on to retailers. At max-tech, however, the battery charger is 3.3 times more expensive than the baseline charger. The baseline level is set at the CSL at which the majority of the market currently ships. Therefore, in addition to the R&D efforts necessary to prepare all product lines to incorporate the max-tech levels, the inability to pass those much higher battery charger costs down the distribution chain drive the negative impacts at max-tech in the worst-case constant price scenario.

Product Classes 2, 3, and 4

The following tables (Table V–24 through Table V–30) summarize information related to the analysis performed to project the potential impacts on manufacturers of devices falling into product classes 2, 3, and 4.

Table V-24 Applications in Product Classes 2, 3, and 4

Product Class 2	Product Class 3	Product Class 4
Answering Machines	Air Mattress Pumps	DIY Power Tools (External)
Baby Monitors	Blenders	Flashlights/Lanterns
Beard and Moustache Trimmers	Camcorders	Handheld Vacuums
Bluetooth Headsets	DIY Power Tools (External)	Medical Nebulizers
Can Openers	DIY Power Tools (Integral)	Netbooks
Consumer Two-Way Radios	Handheld Vacuums	Notebooks
Cordless Phones	Mixers	Portable Printers
Digital Cameras	Portable DVD Players	Professional Power Tools
DIY Power Tools (Integral)	Portable Printers	Professional Power Tools
E-Books	RC Toys	Rechargeable Garden Care Products
Hair Clippers	Stick Vacuums	Robotic Vacuums
Handheld GPS	Toy Ride-On Vehicles	Sleep Apnea Machines
Home Security Systems	Universal Battery Chargers	Stick Vacuums
In-Vehicle GPS	VoIP Adapters	Universal Battery Chargers
Media Tablets	Wireless Speakers	
Mobile Internet Hotspots		
Mobile Phones		
MP3 Players		
MP3 Speaker Docks		
Personal Digital Assistants		
Portable Video Game Systems		
Shavers		
Smartphone		
Video Game Consoles		
Wireless Headphones		

Table V-25 Cash Flow Results – Product Classes 2, 3, and 4 – Flat Markup Scenario

	Units	Base Case*	Trial Standard Level			
			1	2	3	4
INPV	2010$ Millions	44,492	44,506	44,625	45,020	45,467
Change in INPV	2010$ Millions	-	15	134	528	975
	(%)	-	0.0%	0.3%	1.2%	2.2%
Product Conversion Costs	2010$ Millions	-	7.1	25.5	160.8	294.5
Capital Conversion Costs	2010$ Millions	-	1.3	6.1	45.4	60.5
Total Investment Required	2010$ Millions	-	8.4	31.6	206.2	355.0

* The reason the Base Case INPV value varies for this product class grouping is because of the uncertainty of how manufacturers will markup their products sold in California due to the CEC standard. The markup scenario used in each table for the DOE standard is also applied to those products sold in California. Therefore in the Flat Markup table above a flat markup is applied to all products sold in California after the CEC standard goes into effect.

Table V-26 Cash Flow Results – Product Classes 2, 3, and 4 – Pass Through Markup Scenario

	Units	Base Case	Trial Standard Level			
			1	2	3	4
INPV	2010$ Millions	44,268	42,679	42,360	40,810	38,949
Change in INPV	2010$ Millions	-	(1,589)	(1,908)	(3,458)	(5,318)
	(%)	-	-3.6%	-4.3%	-7.8%	-12.0%
Product Conversion Costs	2010$ Millions	-	7.1	25.5	160.8	294.5
Capital Conversion Costs	2010$ Millions	-	1.3	6.1	45.4	60.5
Total Investment Required	2010$ Millions	-	8.4	31.6	206.2	355.0

Table V-27 Cash Flow Results – Product Classes 2, 3, and 4 – Constant Price Markup Scenario

	Units	Base Case	Trial Standard Level			
			1	2	3	4
INPV	2010$ Millions	43,808	38,911	37,752	32,944	29,246
Change in INPV	2010$ Millions	-	(4,897)	(6,055)	(10,863)	(14,562)
	(%)	-	-11.2%	-13.8%	-24.8%	-33.2%
Product Conversion Costs	2010$ Millions	-	7.1	25.5	160.8	294.5
Capital Conversion Costs	2010$ Millions	-	1.3	6.1	45.4	60.5
Total Investment Required	2010$ Millions	-	8.4	31.6	206.2	355.0

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Taken together, product classes 2, 3, and 4 include the greatest number of applications and account for more than 75 percent of total battery charger shipments in 2013, the anticipated compliance year for new energy conservation standards. These product classes also include a wide variety of applications, characterized by differing shipment volumes, base case efficiency distributions, and MSPs. Because of this variety, this product class grouping, more than any other, requires a greater level of disaggregation to evaluate specific industry impacts. Presented only on a product class basis, industry impacts are effectively shipment-weighted and mask impacts on certain industry applications that vary substantially from the aggregate results. Therefore, in addition to the overall product class group results, DOE also presents results by industry subgroups—consumer electronics, small appliances, power tools, and high-energy applications—in the pass through scenario, which approximates the mid-point of the potential range of impacts. These results highlight impacts at various TSLs.

TSL 1 would require battery chargers in product classes 2, 3 and 4 to each meet CSL 1. Impacts on INPV are relatively moderate at TSL 1 because a majority of application shipments in these product classes already meet CSL 1. However, those shipments already meeting CSL 1 are heavily weighted toward the consumer electronics sector. In most cases, CSL 1 could be met with incremental circuit design improvements and higher efficiency components. Satisfying this level would not require a full topology redesign or a move to Li-ion chemistry, although manufacturers of some applications indicated in interviews that they may elect such a design path.

TSL 2 has the same efficiency requirements for product classes 3 and 4 as TSL 1 (CSL 1). Product class 2 manufacturers would have to meet CSL 2 at TSL 2, which would likely require battery charger design changes (e.g., moving to switched-mode and Li-ion chemistries) that would likely cause application manufacturers to incur significant R&D expenditures relative to what is normally budgeted for battery chargers. However, the financial impact of this investment effect would be minor compared to the base case industry value, which is largely driven by consumer electronics applications.

Industry impacts would become more acute at TSL 3 and TSL 4, as best-in-market or max-tech designs would be required for all battery chargers. The cost of a battery charger in product classes 3 and 4 rises sharply at CSL 2 (best in market) and further at CSL 3 (max-tech). For relatively inexpensive applications, the inability to fully pass on these substantially higher costs (as assumed in the pass through and, to a greater extent, the constant price scenario) leads to significant margin compression, working capital drains, and, ultimately, reductions in INPV at the max-tech TSL.

As discussed above, these aggregated results can mask differentially impacted industries and manufacturer subgroups. Nearly 90 percent of shipments in product classes 2, 3 and 4 fall under the broader consumer electronics category, with the remaining share split between small appliances and power tools. Consumer electronics applications have a much higher shipment-weighted average MSP ($175) than the other product categories ($80 for power tools and $60 for small appliances). Consequently, consumer electronics manufacturers are better able to absorb higher battery charger costs than small appliance and power tool manufacturers. Further, consumer electronics typically incorporate higher efficiency battery chargers already, while small appliances and power tool applications tend to cluster around baseline and CSL 1 efficiencies. These factors lead to proportionally greater impacts on small appliance and power tool manufacturers in the event they are not able to pass on and markup higher battery charger costs.

Table V–28 through Table V–30 present INPV impacts in the pass

through markup scenario for consumer electronic, power tool, and small appliance applications, respectively (for only those applications incorporating battery chargers in product class 2, 3 or 4). The results clearly indicate manufacturers of power tools and small appliances would face disproportionately adverse impacts, as compared to consumer electronics manufacturers and the overall product group's results (shown above in Table V–25 through Table V–27), if they are not able to mark up the incremental product costs.

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Table V-28 Cash Flow Results – Product Classes 2, 3, and 4 – Pass Through Markup Scenario – Consumer Electronics

	Units	Base Case	Trial Standard Level			
			1	2	3	4
INPV	2010$ Millions	41,894	40,679	40,373	39,160	37,683
Change in INPV	2010$ Millions	-	(1,215)	(1,521)	(2,734)	(4,211)
	(%)	-	-2.9%	-3.6%	-6.5%	-10.1%
Product Conversion Costs	2010$ Millions	-	4.8	22.7	140.4	249.2
Capital Conversion Costs	2010$ Millions	-	1.2	5.8	36.1	48.1
Total Investment Required	2010$ Millions	-	5.9	28.5	176.5	297.3

Table V-29 Cash Flow Results – Product Classes 2, 3, and 4 – Pass Through Markup Scenario - Power Tools

	Units	Base Case	Trial Standard Level			
			1	2	3	4
INPV	2010$ Millions	1,814	1,566	1,560	1,344	1,098
Change in INPV	2010$ Millions	-	(248)	(254)	(470)	(716)
	(%)	-	-13.7%	-14.0%	-25.9%	-39.5%
Product Conversion Costs	2010$ Millions	-	1.7	1.8	10.5	26.7
Capital Conversion Costs	2010$ Millions	-	0.1	0.1	4.7	6.2
Total Investment Required	2010$ Millions	-	1.7	2.0	15.3	32.9

Table V-30 Cash Flow Results – Product Classes 2, 3, and 4 – Pass Through Markup Scenario – Small Appliances

	Units	Base Case	Trial Standard Level			
			1	2	3	4
INPV	2010$ Millions	560	435	427	305	168
Change in INPV	2010$ Millions	-	(125)	(133)	(255)	(392)
	(%)	-	-22.4%	-23.7%	-45.4%	-70.0%
Product Conversion Costs	2010$ Millions	-	0.7	0.9	9.9	18.6
Capital Conversion Costs	2010$ Millions	-	0.1	0.2	4.5	6.2
Total Investment Required	2010$ Millions	-	0.7	1.1	14.5	24.7

Product Classes 5 and 6

The following tables (Table V–31 through Table V–34) summarize information related to the analysis performed to project the potential impacts on manufacturers of devices falling into product classes 5 and 6.

Table V-31 Applications in Product Classes 5 and 6

Product Class 5	Product Class 6
Marine/Automotive/RV Chargers	Electric Scooters
Mobility Scooters	Lawn Mowers
Portable O2 Concentrators	Motorized Bicycles
Ride-On Toy Vehicles	Wheelchairs
Wheelchairs	

Ride-on toy vehicles represent nearly three quarters of the combined shipment volume in product classes 5 and 6, with marine chargers and electric scooters accounting for the majority of the remaining share. DOE's market survey and interviews found that nearly all of the higher energy applications incorporate battery chargers with lead acid battery chemistries. With the exception of battery chargers for toy ride-on vehicles and lawn mowers, the majority of products in these groupings use baseline battery chargers.

Table V-32 Cash Flow Results – Product Classes 5 and 6 – Flat Markup Scenario

	Units	Base Case*	Trial Standard Level		
			1	2	3
INPV	2010$ Millions	1,584	1,589	1,543	2,275
Change in INPV	2010$ Millions	-	6	(40)	692
	(%)	-	0.3%	-2.5%	43.7%
Product Conversion Costs	2010$ Millions	-	1.8	9.8	16.3
Capital Conversion Costs	2010$ Millions	-	0.0	2.1	4.6
Total Investment Required	2010$ Millions	-	1.8	11.9	20.9

* The reason the Base Case INPV value varies for this product class grouping is because of the uncertainty of how manufacturers will markup their products sold in California due to the CEC standard. The markup scenario used in each table for the DOE standard is also applied to those products sold in California. Therefore in the Flat Markup table above a flat markup is applied to all products sold in California after the CEC standard goes into effect.

Table V-33 Cash Flow Results – Product Classes 5 and 6 – Pass Through Markup Scenario

	Units	Base Case	Trial Standard Level		
			1	2	3
INPV	2010$ Millions	1,549	1,281	1,324	235
Change in INPV	2010$ Millions	-	(268)	(225)	(1,314)
	(%)	-	-17.3%	-14.5%	-84.8%
Product Conversion Costs	2010$ Millions	-	1.8	9.8	16.3
Capital Conversion Costs	2010$ Millions	-	0.0	2.1	4.6
Total Investment Required	2010$ Millions	-	1.8	11.9	20.9

Table V-34 Cash Flow Results – Product Classes 5 and 6 – Constant Price Markup Scenario

	Units	Base Case	Trial Standard Level		
			1	2	3
INPV	2010$ Millions	1,552	1,226	1,429	409
Change in INPV	2010$ Millions	-	(327)	(123)	(1,143)
	(%)	-	-21.0%	-7.9%	-73.6%
Product Conversion Costs	2010$ Millions	-	1.8	9.8	16.3
Capital Conversion Costs	2010$ Millions	-	0.0	2.1	4.6
Total Investment Required	2010$ Millions	-	1.8	11.9	20.9

TSL 1, TSL 2, and TSL 3 represent CSL 1, CSL 2, and CSL 3, respectively, for both product class 5 and product class 6. The battery charger cost associated with each CSL is the same for product classes 5 and 6. The industry impacts at TSL 1 are minor to moderate because a large percentage of the market already meets the CSLs represented in that TSL and because the incremental battery charger product costs are minor relative to the average application MSP of $220. At TSL 2, the battery charger cost declines compared to the baseline because of the technology shift from a line-frequency power supply to a switch-mode power supply, and the resulting impacts are projected to remain fairly moderate. At TSL 3, however, the impacts on INPV are severe because the required max-tech battery chargers would cost nearly seven times the cost of a baseline charger.

Under the flat markup scenario, which assumes manufacturers could fully mark up the product to recover this additional cost, such an increase generates substantially greater cash flow and industry value. However, as noted earlier, the greater the increase in product costs, the less likely DOE believes that manufacturers will be able to fully markup the substantially higher production costs (the flat markup scenario). DOE believes manufacturers would be forced to absorb much of this dramatic cost increase at max-tech, yielding the substantially negative industry impacts, as shown by the lower-bound results.

Product Class 7

The following tables (Table V–35 through Table V–38) summarize information related to the analysis performed to project the potential impacts on manufacturers of devices falling into product class 7.

Table V-35 Applications in Product Class 7

Product Class 7
Golf Cars

Table V-36 Cash Flow Results – Product Class 7 – Flat Markup Scenario

	Units	Base Case*	Trial Standard Level	
			1	2
INPV	2010$ Millions	1,034	1,030	1,057
Change in INPV	2010$ Millions	-	(4)	23
	(%)	-	-0.4%	2.2%
Product Conversion Costs	2010$ Millions	-	0.6	2.6
Capital Conversion Costs	2010$ Millions	-	0.2	1.5
Total Investment Required	2010$ Millions	-	0.7	4.1

* The reason the Base Case INPV value varies for this product class grouping is because of the uncertainty of how manufacturers will markup their products sold in California due to the CEC standard. The markup scenario used in each table for the DOE standard is also applied to those products sold in California. Therefore in the Flat Markup table above a flat markup is applied to all products sold in California after the CEC standard goes into effect.

Table V-37 Cash Flow Results – Product Class 7 – Pass Through Markup Scenario

	Units	Base Case	Trial Standard Level	
			1	2
INPV	2010$ Millions	1,036	1,050	1,003
Change in INPV	2010$ Millions	-	14	(33)
	(%)	-	1.4%	-3.2%
Product Conversion Costs	2010$ Millions	-	0.6	2.6
Capital Conversion Costs	2010$ Millions	-	0.2	1.5
Total Investment Required	2010$ Millions	-	0.7	4.1

Table V-38 Cash Flow Results – Product Class 7 – Constant Price Markup Scenario

	Units	Base Case	Trial Standard Level	
			1	2
INPV	2010$ Millions	1,039	1,086	903
Change in INPV	2010$ Millions	-	47	(136)
	(%)	-	4.5%	-13.1%
Product Conversion Costs	2010$ Millions	-	0.6	2.6
Capital Conversion Costs	2010$ Millions	-	0.2	1.5
Total Investment Required	2010$ Millions	-	0.7	4.1

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Golf cars are the only application in product class 7. Approximately half the market incorporates baseline battery charger technology—the other half employs technology that meets the efficiency requirements at CSL 1. The cost of a battery charger in product class 7, though higher relative to other product classes, remains a small portion of the overall selling price of a golf car. As such, large percentage increases in the cost of the battery charger, as in the case of max-tech, do not yield severe impacts on golf car OEMs, even in the constant price scenario. Note, however, this analysis focuses on the application manufacturer, or the OEM. DOE did identify a U.S. small business manufacturer of the golf car battery charger itself (as opposed to the application). DOE evaluates the impacts on standards on such manufacturers in the Regulatory Flexibility Analysis (see section VI.B for the results of that analysis).

Product Class 8

The following tables (Table V–39 through Table V–42) summarize information related to the analysis performed to project the potential impacts on manufacturers of devices falling into product class 8.

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Table V-39 Applications in Product Class 8

Product Class 8
Bluetooth Headsets
Camcorders
Digital Cameras
E-Books
Handheld GPS
Handheld Image Scanners
Mobile Phones
MP3 Players
Personal Digital Assistants

Table V-40 Cash Flow Results – Product Class 8 – Flat Markup Scenario

	Units	Base Case	Trial Standard Level		
			1	2	3
INPV	2010$ Millions	5,703	5,628	5,707	5,672
Change in INPV	2010$ Millions	-	(75)	4	(30)
	(%)	-	-1.3%	0.1%	-0.5%
Product Conversion Costs	2010$ Millions	-	13.2	35.8	79.5
Capital Conversion Costs	2010$ Millions	-	0.0	6.1	6.8
Total Investment Required	2010$ Millions	-	13.2	41.9	86.3

Table V-41 Cash Flow Results – Product Class 8 – Pass Through Markup Scenario

	Units	Base Case	Trial Standard Level		
			1	2	3
INPV	2010$ Millions	5,703	6,064	5,730	5,663
Change in INPV	2010$ Millions	-	361	27	(40)
	(%)	-	6.3%	0.5%	-0.7%
Product Conversion Costs	2010$ Millions	-	13.2	35.8	79.5
Capital Conversion Costs	2010$ Millions	-	0.0	6.1	6.8
Total Investment Required	2010$ Millions	-	13.2	41.9	86.3

Table V-42 Cash Flow Results – Product Class 8 – Constant Price Markup Scenario

	Units	Base Case	Trial Standard Level		
			1	2	3
INPV	2010$ Millions	5,703	7,002	5,781	5,642
Change in INPV	2010$ Millions	-	1,300	78	(61)
	(%)	-	22.8%	1.4%	-1.1%
Product Conversion Costs	2010$ Millions	-	13.2	35.8	79.5
Capital Conversion Costs	2010$ Millions	-	0.0	6.1	6.8
Total Investment Required	2010$ Millions	-	13.2	41.9	86.3

Product class 8 includes 14 applications, mostly consumer electronics. MP3 players and mobile phones make up the vast majority of product class 8 shipments (58 percent and 31 percent, respectively). Approximately 50 percent of MP3 players meet CSL 1 or higher and 73 percent of mobile phones already incorporate best-in-market battery chargers that exceed CSL 2. For most other applications in this product class, roughly two-thirds of the incorporated battery chargers already meet or exceed CSL 1. Furthermore, because the manufacturer selling prices of these dominant applications dwarf the incremental product costs associated with increasing the efficiency—even at max-tech—the overall industry impacts are projected to be minor for all TSLs for product class 8.

Product Class 9

Table V-43 Applications in Product Class 9

Product Class 9
Flashlights/Lanterns
In-Vehicle GPS
Medical Nebulizers
Portable O2 Concentrators

DOE did not examine any TSLs for product class 9 and did not conduct any downstream analyses for this product class. For product class 9, DOE is not proposing any energy conservation standards. Section V.B.2.fof this NOPR provides a more detailed reason for this decision.

Product Class 10

The following tables (Table V–44 through Table V–47) summarize information related to the analysis performed to project the potential impacts on manufacturers of devices falling into product class 10.

Table V-44 Applications in Product Class 10

Product Class 10
Uninterruptible Power Supplies

Table V-45 Cash Flow Results – Product Class 10 – Flat Markup Scenario

	Units	Base Case*	Trial Standard Level		
			1	2	3
INPV	2010$ Millions	614	614	612	609
Change in INPV	2010$ Millions	-	(0)	(2)	(5)
	(%)	-	-0.1%	-0.4%	-0.9%
Product Conversion Costs	2010$ Millions	-	0.7	2.2	4.5
Capital Conversion Costs	2010$ Millions	-	0.0	0.4	1.5
Total Investment Required	2010$ Millions	-	0.7	2.6	6.0

* The reason the Base Case INPV value varies for this product class grouping is because of the uncertainty of how manufacturers will markup their products sold in California due to the CEC standard. The markup scenario used in each table for the DOE standard is also applied to those products sold in California. Therefore in the Flat Markup table above a flat markup is applied to all products sold in California after the CEC standard goes into effect.

Table V-46 Cash Flow Results – Product Class 10 – Pass Through Markup Scenario

	Units	Base Case	Trial Standard Level		
			1	2	3
INPV	2010$ Millions	614	593	586	577
Change in INPV	2010$ Millions	-	(21)	(28)	(37)
	(%)	-	-3.5%	-4.5%	-5.9%
Product Conversion Costs	2010$ Millions	-	0.7	2.2	4.5
Capital Conversion Costs	2010$ Millions	-	0.0	0.4	1.5
Total Investment Required	2010$ Millions	-	0.7	2.6	6.0

Table V-47 Cash Flow Results – Product Class 10 – Constant Price Markup Scenario

	Units	Base Case	Trial Standard Level		
			1	2	3
INPV	2010$ Millions	612	532	512	487
Change in INPV	2010$ Millions	-	(81)	(100)	(126)
	(%)	-	-13.2%	-16.4%	-20.5%
Product Conversion Costs	2010$ Millions	-	0.7	2.2	4.5
Capital Conversion Costs	2010$ Millions	-	0.0	0.4	1.5
Total Investment Required	2010$ Millions	-	0.7	2.6	6.0

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Product class 10 has only one application: Uninterruptible power supplies. The vast majority of models on the market have sealed lead-acid battery chemistries. The efficiency distribution for product class 10 assumes all shipments are at the baseline CSL. Compared to the average application MSP of approximately $289, the incremental costs of meeting the higher CSLs remain relatively low, despite increasing substantially on a percentage basis. Therefore, even in the constant price scenario, INPV impacts are projected to be limited.

b. Impacts on Employment

As part of the direct employment impact analysis, DOE attempted to quantify the number of domestic workers involved in EPS manufacturing. Based on manufacturer interviews and DOE's research, DOE believes that all major EPS ODMs are foreign owned and operated. DOE did identify a few smaller niche EPS ODMs based in the U.S. and attempted to contact these companies. All of the companies DOE reached indicated their EPS manufacturing takes place abroad. During manufacturer interviews, large manufacturers also indicated the vast majority, if not all, EPS production takes place overseas. Due to DOE's inability to identify any EPS ODMs with domestic manufacturing, DOE has tentatively concluded that there are no EPSs currently manufactured domestically.

However, in recognition of the fragmented nature of this market, DOE seeks comment and input as to whether there are EPS manufacturers that have domestic production.

DOE also recognizes there are several OEMs or their domestic distributors that have employees in the U.S. that work on design, technical support, sales, training, certification, and other requirements. However, in interviews manufacturers generally did not expect any negative changes in the domestic employment of the design, technical support, or other departments of EPS OEMs located in the U.S. in response to new or amended energy conservation standards.

For battery chargers, DOE similarly attempted to quantify the number of domestic workers involved in battery charger production. Based on manufacturer interviews and DOE's research, DOE believes that the vast majority of all small appliance and consumer electronic applications are manufactured abroad. When looking specifically at the battery charger component, which is typically designed by the application manufacturer but sourced for production, the same dynamic holds to an even greater extent. That is, in the rare instance when an application's production occurs domestically, it is very likely that the battery charger component is still produced and sourced overseas. For example, DOE identified several power tool applications with some level of domestic manufacturing. However, based on more detailed information obtained during interviews, DOE believes the battery charger components for these applications are sourced from abroad.

Also, DOE was able to find a few manufacturers of medium and high power applications with facilities in the U.S. However, only a limited number of these companies produce battery chargers domestically for these applications. Therefore, based on manufacturer interviews and DOE's research, DOE believes that golf cars are the only application with U.S.-based battery charger manufacturing. Any change in U.S. production employment due to new battery charger energy conservation standards is likely to come from changes involving these particular products. DOE seeks comment on the presence of any domestic battery charger manufacturing outside of the golf car industry and beyond prototyping for R&D purposes.

At the proposed efficiency levels, domestic golf car manufacturers will face a difficult decision on whether to attempt to manufacture more efficient battery chargers in-house and try to compete with a greater level of vertical integration than their competitors, move production to lower-wage regions abroad, or source their battery charger manufacturing. DOE believes one of the latter two strategies would be more likely for domestic golf car manufacturers. DOE describes the major implications for golf car employment in the regulatory flexibility section VI.B below because the major domestic manufacturer is also a small business manufacturer. Similar to EPSs, DOE does not anticipate any negative changes in the domestic employment of the design, technical support, or other departments of battery charger application manufacturers located in the U.S. in response to new energy conservation standards. Standards may require some companies to redesign their battery chargers, change marketing literature, and train some technical and sales support staff. However, during interviews, manufacturers generally agreed these changes would not lead to positive or negative changes in employment.

c. Impacts on Manufacturing Capacity

DOE does not anticipate that the standards proposed in today's rule would adversely impact manufacturer capacity. For EPSs, EISA has set a statutory compliance date. The EPS industry is characterized by rapid product development lifecycles. Most battery charger applications have similar design cycles. While there is no statutory compliance date for battery chargers, DOE believes the compliance date proposed in today's rule provides sufficient time for manufacturers to ramp up capacity to meet the proposed standards for battery chargers and EPSs. DOE requests comment on the appropriate compliance date for battery charger (see section I).

d. Impacts on Sub-Group of Manufacturers

Using average cost assumptions to develop an industry cash-flow estimate is not adequate for assessing differential impacts among manufacturer subgroups. Small manufacturers, niche equipment manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. DOE addressed manufacturer subgroups in the battery charger MIA. Because certain applications are disproportionately impacted compared to the overall product class, DOE reports those results individually so they can be considered as part of the overall MIA. DOE did not identify any EPS manufacturer subgroups that would require a separate analysis in the MIA.

DOE also identified small businesses as a subgroup that could potentially be disproportionally impacted. DOE discusses the impacts on the small business subgroup in the regulatory flexibility analysis (section VI.B).

e. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of several impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and can lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency. DOE received many comments about the potential cumulative regulatory burden (see section IV.I.4.a) that may result from a standard for battery chargers and EPSs. The regulatory burdens described in those comments, however, generally fall outside of the scope of the cumulative regulatory burden analysis, which generally focuses on the impacts related to Federal regulations with a compliance date within three years of the anticipated compliance date of today's proposal. DOE notes that the potential for duplicative testing requirements raised by some commenters were addressed above.

i. Impact Due to CEC Battery Charger Standard

Table V–48 presents the range of impacts on all battery charger product classes due to the CEC battery charger standards.

Table V-48 – Base Case Manufacturer Impact Analysis for All Battery Charger Product Classes Due to the CEC Standard

	Units	No California Standard	With California Standard*		
			Flat Markup	Pass Through Markup	Constant Price Markup
INPV	2010$ Millions	53,780	53,918	53,660	53,205
Change in INPV	2010$ Millions	-	137	-120	-575
	(%)	-	0.3	(0.2)	(1.1)
Product Conversion Costs	2010$ Millions	-	12.6	12.6	12.6
Capital Conversion Costs	2010$ Millions	-	3.8	3.8	3.8
Total Investment Required	2010$ Millions	-	16.4	16.4	16.4

* The reason the Base Case INPV value varies for battery chargers is because of the uncertainty of how manufacturers will markup their products sold in California due to the CEC standard. The markup scenario used in each column is applied to those products sold in California. Therefore in the Constant Price column a constant price markup is applied to all products sold in California after the CEC standard goes into effect.

DOE quantitatively assessed the impact of the CEC battery charger standard on battery charger application manufacturers. This standard affects applications using a battery charger that are sold in California beginning in 2013. DOE estimates the impacts on manufacturers to range from $137 million to −$575 million, or a change in INPV of 0.3 percent to −1.1 percent. This range depends on manufacturers' ability to pass on the incremental price increases to consumers in the California markets caused by the CEC standard. DOE also estimated manufacturers will have to invest $12.6 million in product conversion costs and $3.8 million in capital conversion costs in order to have all battery charger applications sold in California meet the CEC standard by 2013.

3. National Impact Analysis

a. Significance of Energy Savings

To estimate the energy savings during the analysis period attributable to potential standards for battery chargers and EPSs, DOE compared the energy consumption of these products in the base case to their anticipated energy consumption with standards set at each TSL.

Table V–49 and Table V–50 present DOE's forecasts of the national energy savings at each TSL for battery chargers and EPSs. The savings were calculated using the approach described in section IV.G. Chapter 10 of the NOPR TSD presents tables that also show the magnitude of the energy savings if the savings are discounted at rates of 3 and 7 percent. Discounted energy savings represent a policy perspective in which energy savings realized farther in the future are less significant than energy savings realized in the nearer term.

Table V-49 External Power Supplies: Cumulative National Energy Savings in Quads

Product Class	Trial Standard Level		
	1	2	3
B	0.458	0.725	1.316
B,C,D, E	0.585	0.916	1.604
X	0.063	0.072	0.147
H	0.001	0.001	0.002

Table V-50 Battery Chargers: Cumulative National Energy Savings in Quads

Product Class	Trial Standard Level			
	1	2	3	4
1	0.056	0.130	0.178	N/A
2, 3, 4	0.309	0.759	1.797	1.997
5, 6	0.268	0.596	0.781	N/A
7	0.007	0.021	N/A	N/A
8	0.010	0.041	0.045	N/A
10	0.231	0.268	0.312	N/A

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV to the Nation of the total costs and savings for consumers that would result from potential standard levels for battery chargers and EPSs. In accordance with the OMB's guidelines on regulatory analysis (OMB Circular A–4, section E, September 17, 2003), DOE calculated NPV using both a 3-percent and a 7-percent real discount rate.

Table V–51 and Table V–52 show the consumer NPV results for each TSL DOE considered for EPSs, using both a 3-percent and a 7-percent discount rate. Table V–53 and Table V–54 show the corresponding results for battery chargers. In each case, the impacts cover the lifetime of products purchased in 2013–2042. See chapter 10 of the TSD for more detailed NPV results.

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Table V-51 Cumulative Net Present Value of Consumer Benefits for External Power Supplies, 3-Percent Discount Rate (2010$ millions)

Product Class	Trial Standard Level		
	1	2	3
B	1,227.7	1,138.4	(3,292.3)
B,C,D, E	1,542.2	1,525.4	(2,982.9)
X	329.2	330.3	(533.2)
H	9.4	9.7	7.6

Table V-52 Cumulative Net Present Value of Consumer Benefits for External Power Supplies, 7-Percent Discount Rate (2010$ millions)

Product Class	Trial Standard Level		
	1	2	3
B	596.2	463.3	(2,356.8)
B,C,D, E	729.7	613.5	(2,301.4)
X	177.7	175.5	(363.5)
H	4.8	5.0	3.6

Table V-53 Cumulative Net Present Value of Consumer Benefits for Battery Chargers, 3-Percent Discount Rate (2010$ millions)

Product Class	Trial Standard Level			
	1	2	3	4
1	294.0	605.6	(781.2)	N/A
2, 3, 4	1,255.1	(366.9)	(14,159.0)	(38,442.7)
5, 6	1,627.9	4,647.7	(11,122.7)	N/A
7	119.4	(493.2)	N/A	N/A
8	2,780.5	(1,654.5)	(2,001.1)	N/A
10	1,192.4	1,354.4	1,549.5	N/A

Table V-54 Cumulative Net Present Value of Consumer Benefits for Battery Chargers, 7-Percent Discount Rate (2010$ millions)

Product Class	Trial Standard Level			
	1	2	3	4
1	156.8	317.9	(527.2)	N/A
2, 3, 4	663.8	(434.7)	(8,973.2)	(23,542.1)
5, 6	867.3	2,539.4	(6,961.4)	N/A
7	69.8	(299.5)	N/A	N/A
8	1,659.3	(999.9)	(1,208.3)	N/A
10	611.3	691.9	788.9	N/A

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DOE conducted NPV sensitivity analysis using three alternative price trends. The NPV results from the associated sensitivity cases are described in appendix 10–X of the NOPR TSD.

c. Indirect Impacts on Employment

DOE develops estimates of the indirect employment impacts of potential standards on the economy in general. As discussed above, DOE expects energy conservation standards for battery chargers and EPSs to reduce energy bills for consumers of these products, and the resulting net savings

to be redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.J, to estimate these effects DOE used an input/output model of the U.S. economy. DOE understands that there are uncertainties involved in projecting employment impacts generated by an input/output model, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframes, such as 2015, where these uncertainties are reduced.

The results suggest the proposed standards are likely to have negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 13 of the NOPR TSD presents more detailed results.

4. Impact on Utility or Performance of Products

As presented in section III.B of this notice, DOE has tentatively concluded that none of the TSLs considered in this notice would reduce the utility or performance of the products under consideration in this rulemaking. Furthermore, manufacturers of these products currently offer EPSs and battery chargers that meet or exceed the proposed standards. (42 U.S.C. 6295(o)(2)(B)(i)(IV))

5. Impact of Any Lessening of Competition

DOE has also considered any lessening of competition that is likely to result from amended standards. The Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination to the Secretary, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii))

To assist the Attorney General in making such determination, DOE will provide DOJ with copies of this NOPR and the TSD for review. DOE will consider DOJ's comments on the proposed rule in preparing the final rule, and DOE will publish and respond to DOJ's comments in that document.

6. Need of the Nation To Conserve Energy

An improvement in the energy efficiency of the products subject to today's NOPR is likely to improve the security of the Nation's energy system and reduce the costs of energy production. Reduced electricity demand may also improve the reliability of the electricity system, particularly during peak-load periods. (42 U.S.C. 6295(o)(2)(B)(i)(VI))

Energy savings from amended standards for Class A EPSs and new standards for non-Class A EPSs and battery chargers could also produce environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with electricity production. Table V–55 and Table V–56 provide DOE's estimate of cumulative CO_2, NO_X, and Hg emissions reductions that would be expected to result from each of the TSLs considered in this rulemaking for EPSs and battery chargers, respectively. In the environmental assessment (chapter 15 in the NOPR TSD), DOE reports annual CO_2, NO_X, and Hg emissions reductions for each considered TSL.

As discussed in section IV.L, DOE has not reported SO_2 emissions reductions from power plants, because there is uncertainty about the effect of energy conservation standards on the overall level of SO_2 emissions in the United States due to SO_2 emissions caps. DOE also did not include NO_X emissions reduction from power plants in States subject to CAIR because an amended energy conservation standard would not affect the overall level of NO_X emissions in those States due to the emissions caps mandated by CAIR.

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Table V-55 Cumulative Emissions Reduction for 2013- 2042 Under External Power Supply TSLs

	TSL 1	TSL 2	TSL 3
Product Class B			
CO_2 (Mt)	21.7	34.3	62.5
NO_X (kt)	17.9	28.4	51.6
Hg(t)	0.115	0.182	0.331
Product Classes B, C, D, and E			
CO_2 (Mt)	27.5	43.0	75.4
NO_X (kt)	22.7	35.5	62.3
Hg(t)	0.145	0.227	0.398
Product Class X			
CO_2 (Mt)	2.95	3.38	6.92
NO_X (kt)	2.43	2.79	5.71
Hg(t)	0.015	0.018	0.036
Product Class H			
CO_2 (Mt)	0.054	0.058	0.065
NO_X (kt)	0.045	0.048	0.053
Hg(t)	0.000	0.000	0.000

Table V-56 Cumulative Emissions Reduction for 2013- 2042 Under Battery Charger TSLs

	TSL 1	TSL 2	TSL 3	TSL 4
Product Class 1				
CO_2 (Mt)	2.62	6.11	8.36	N/A
NO_X (kt)	2.17	5.05	6.90	N/A
Hg(t)	0.014	0.032	0.044	N/A
Product Classes 2, 3, 4				
CO_2 (Mt)	14.7	35.9	85.1	94.6
NO_X (kt)	12.1	29.7	70.3	78.1
Hg(t)	0.078	0.191	0.452	0.502
Product Classes 5, 6				
CO_2 (Mt)	12.4	27.4	35.9	N/A
NO_X (kt)	10.2	22.6	29.6	N/A
Hg(t)	0.065	0.143	0.187	N/A
Product Class 7				
CO_2 (Mt)	0.312	0.975	N/A	N/A
NO_X (kt)	0.259	0.808	N/A	N/A
Hg(t)	0.002	0.006	N/A	N/A
Product Class 8				
CO_2 (Mt)	0.457	1.95	2.16	N/A
NO_X (kt)	0.378	1.61	1.78	N/A
Hg(t)	0.002	0.010	0.011	N/A
Product Class 10				
CO_2 (Mt)	10.3	11.9	13.9	N/A
NO_X (kt)	8.46	9.81	11.5	N/A
Hg(t)	0.068	0.079	0.092	N/A

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DOE also estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X that DOE estimated for each of the TSLs considered for battery chargers and EPSs. In order to make this calculation similar to the calculation of the NPV of consumer benefits, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the forecast period for each TSL.

As discussed in section IV.M, a Federal interagency group selected four SCC values for use in regulatory analyses, which DOE used in the NOPR analysis. The four SCC values (expressed in 2007$) are $4.7/ton (the average value from a distribution that uses a 5-percent discount rate), $21.4/ton (the average value from a distribution that uses a 3-percent discount rate), $35.1/ton (the average value from a distribution that uses a 2.5-percent discount rate), and $64.9/ton (the 95th-percentile value from a distribution that uses a 3-percent discount rate). These values correspond to the value of CO_2 emission reductions in 2010; the values for later years are higher due to increasing damages as the magnitude of climate change increases. For each of the four cases, DOE calculated a present value of the stream of annual values using the same discount rate as was used in the studies upon which the dollar-per-ton values are based.

Table V–57 to Table V–60 and Table V–61 to Table V–66 present the global values of CO_2 emissions reductions at each TSL considered for energy efficiency for EPSs and battery chargers, respectively. As explained in section IV.M.1, DOE calculated domestic values as a range from 7 percent to 23 percent of the global values, and these results are presented in Table V–67to Table V–70 and Table V–71 to Table V–76 for EPSs and battery chargers, respectively.

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Table V-57 External Power Supply Product Class B: Estimates of Global Present Value of CO_2 Emissions Reduction Under TSLs

TSL	Million 2010$			
	5% discount rate, average*	3% discount rate, average*	2.5% discount rate, average*	3% discount rate, 95th percentile*
1	91	448	752	1,369
2	145	710	1,190	2,166
3	263	1,289	2,162	3,936

* Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution. Values presented in the table are based on escalating the SCC values in 2007$ to 2010$ for consistency with other values presented in this notice, and incorporate the escalation of the SCC over time.

Table V-58 External Power Supply Product Classes B, C, D, and E: Estimates of Global Present Value of CO_2 Emissions Reduction Under TSLs

TSL	Million 2010$			
	5% discount rate, average*	3% discount rate, average*	2.5% discount rate, average*	3% discount rate, 95th percentile*
1	116	572	960	1,746
2	182	895	1,501	2,731
3	319	1,568	2,631	4,785

* Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution. Values presented in the table are based on escalating the SCC values in 2007$ to 2010$ for consistency with other values presented in this notice, and incorporate the escalation of the SCC over time.

Table V-59 External Power Supply Product Class X: Estimates of Global Present Value of CO_2 Emissions Reduction Under TSLs

TSL	Million 2010$			
	5% discount rate, average*	3% discount rate, average*	2.5% discount rate, average*	3% discount rate, 95th percentile*
1	12	61	103	187
2	14	70	118	215
3	29	144	242	440

* Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution. Values presented in the table are based on escalating the SCC values in 2007$ to 2010$ for consistency with other values presented in this notice, and incorporate the escalation of the SCC over time.

Table V-60 External Power Supply Product Class H: Estimates of Global Present Value of CO_2 Emissions Reduction Under TSLs

TSL	Million 2010$			
	5% discount rate, average*	3% discount rate, average*	2.5% discount rate, average*	3% discount rate, 95th percentile*
1	0	1	2	4
2	0	1	2	4
3	0	1	2	4

* Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution. Values presented in the table are based on escalating the SCC values in 2007$ to 2010$ for consistency with other values presented in this notice, and incorporate the escalation of the SCC over time.

Table V-61 Battery Charger Product Class 1: Estimates of Global Present Value of CO_2 Emissions Reduction Under TSLs

TSL	Million 2010$			
	5% discount rate, average*	3% discount rate, average*	2.5% discount rate, average*	3% discount rate, 95th percentile*
1	11	55	92	167
2	26	127	213	388
3	35	174	292	531

* Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution. Values presented in the table are based on escalating the SCC values in 2007$ to 2010$ for consistency with other values presented in this notice, and incorporate the escalation of the SCC over time.

Table V-62 Battery Chargers Product Classes 2, 3, 4: Estimates of Global Present Value of CO_2 Emissions Reduction Under TSLs

TSL	Million 2010$			
	5% discount rate, average*	3% discount rate, average*	2.5% discount rate, average*	3% discount rate, 95th percentile*
1	62	302	506	921
2	151	740	1,242	2,260
3	358	1,753	2,940	5,352
4	398	1,949	3,268	5,949

* Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution. Values presented in the table are based on escalating the SCC values in 2007$ to 2010$ for consistency with other values presented in this notice, and incorporate the escalation of the SCC over time.

Table V-63 Battery Chargers Product Classes 5, 6: Estimates of Global Present Value of CO_2 Emissions Reduction Under TSLs

TSL	Million 2010$			
	5% discount rate, average*	3% discount rate, average*	2.5% discount rate, average*	3% discount rate, 95th percentile*
1	53	261	438	795
2	118	580	974	1,770
3	154	760	1,276	2,318

* Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution. Values presented in the table are based on escalating the SCC values in 2007$ to 2010$ for consistency with other values presented in this notice, and incorporate the escalation of the SCC over time.

Table V-64 Battery Chargers Product Class 7: Estimates of Global Present Value of CO_2 Emissions Reduction Under TSLs

TSL	Million 2010$			
	5% discount rate, average*	3% discount rate, average*	2.5% discount rate, average*	3% discount rate, 95th percentile*
1	1	6	11	19
2	4	20	33	61

* Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution. Values presented in the table are based on escalating the SCC values in 2007$ to 2010$ for consistency with other values presented in this notice, and incorporate the escalation of the SCC over time.

Table V-65 Battery Chargers Product Class 8: Estimates of Global Present Value of CO_2 Emissions Reduction Under TSLs

TSL	Million 2010$			
	5% discount rate, average*	3% discount rate, average*	2.5% discount rate, average*	3% discount rate, 95th percentile*
1	2	9	16	29
2	8	40	67	122
3	9	44	74	136

* Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution. Values presented in the table are based on escalating the SCC values in 2007$ to 2010$ for consistency with other values presented in this notice, and incorporate the escalation of the SCC over time.

Table V-66 Battery Chargers Product Class 10: Estimates of Global Present Value of CO_2 Emissions Reduction Under TSLs

TSL	Million 2010$			
	5% discount rate, average*	3% discount rate, average*	2.5% discount rate, average*	3% discount rate, 95th percentile*
1	45	220	370	672
2	52	256	430	780
3	60	298	501	910

* Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution. Values presented in the table are based on escalating the SCC values in 2007$ to 2010$ for consistency with other values presented in this notice, and incorporate the escalation of the SCC over time.

Table V-67 External Power Supply Product Class B: Estimates of Domestic Present Value of CO_2 Emissions Reduction Under TSLs

TSL	Million 2010$			
	5% discount rate, average*	3% discount rate, average*	2.5% discount rate, average*	3% discount rate, 95th percentile*
1	6 to 21	31 to 103	53 to 173	96 to 315
2	10 to 33	50 to 163	83 to 274	152 to 498
3	18 to 60	90 to 297	151 to 497	275 to 905

* Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution. Values presented in the table are based on escalating the SCC values in 2007$ to 2010$ for consistency with other values presented in this notice, and incorporate the escalation of the SCC over time.

Table V-68 External Power Supply Product Classes B, C, D, E: Estimates of Domestic Present Value of CO_2 Emissions Reduction Under TSLs

TSL	Million 2010$			
	5% discount rate, average*	3% discount rate, average*	2.5% discount rate, average*	3% discount rate, 95th percentile*
1	8 to 27	40 to 132	67 to 221	122 to 402
2	13 to 42	63 to 206	105 to 345	191 to 628
3	22 to 73	110 to 361	184 to 605	335 to 1,101

* Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution. Values presented in the table are based on escalating the SCC values in 2007$ to 2010$ for consistency with other values presented in this notice, and incorporate the escalation of the SCC over time.

Table V-69 External Power Supply Product Class X: Estimates of Domestic Present Value of CO_2 Emissions Reduction Under TSLs

TSL	Million 2010$			
	5% discount rate, average*	3% discount rate, average*	2.5% discount rate, average*	3% discount rate, 95th percentile*
1	1 to 3	4 to 14	7 to 24	13 to 43
2	1 to 3	5 to 16	8 to 27	15 to 49
3	2 to 7	10 to 33	17 to 56	31 to 101

* Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution. Values presented in the table are based on escalating the SCC values in 2007$ to 2010$ for consistency with other values presented in this notice, and incorporate the escalation of the SCC over time.

Table V-70 External Power Supply Product Class H: Estimates of Domestic Present Value of CO_2 Emissions Reduction Under TSLs

TSL	Million 2010$			
	5% discount rate, average*	3% discount rate, average*	2.5% discount rate, average*	3% discount rate, 95th percentile*
1	0.017 to 0.056	0.085 to 0.280	0.144 to 0.472	0.260 to 0.854
2	0.018 to 0.060	0.092 to 0.301	0.154 to 0.507	0.279 to 0.918
3	0.020 to 0.067	0.102 to 0.334	0.172 to 0.564	0.310 to 1.020

* Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution. Values presented in the table are based on escalating the SCC values in 2007$ to 2010$ for consistency with other values presented in this notice, and incorporate the escalation of the SCC over time.

Table V-71 Battery Charger Product Class 1: Estimates of Domestic Present Value of CO_2 Emissions Reduction Under TSLs

TSL	Million 2010$			
	5% discount rate, average*	3% discount rate, average*	2.5% discount rate, average*	3% discount rate, 95th percentile*
1	1 to 3	4 to 13	6 to 21	12 to 38
2	2 to 6	9 to 29	15 to 49	27 to 89
3	2 to 8	12 to 40	20 to 67	37 to 122

* Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution. Values presented in the table are based on escalating the SCC values in 2007$ to 2010$ for consistency with other values presented in this notice, and incorporate the escalation of the SCC over time.

Table V-72 Battery Charger Product Classes 2, 3, 4: Estimates of Domestic Present Value of CO_2 Emissions Reduction Under TSLs

TSL	Million 2010$			
	5% discount rate, average*	3% discount rate, average*	2.5% discount rate, average*	3% discount rate, 95th percentile*
1	4 to 14	21 to 69	35 to 116	64 to 212
2	11 to 35	52 to 170	87 to 286	158 to 520
3	25 to 82	123 to 403	206 to 676	375 to 1,231
4	28 to 91	136 to 448	229 to 752	416 to 1,368

* Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution. Values presented in the table are based on escalating the SCC values in 2007$ to 2010$ for consistency with other values presented in this notice, and incorporate the escalation of the SCC over time.

Table V-73 Battery Charger Product Classes 5, 6: Estimates of Domestic Present Value of CO_2 Emissions Reduction Under TSLs

TSL	Million 2010$			
	5% discount rate, average*	3% discount rate, average*	2.5% discount rate, average*	3% discount rate, 95th percentile*
1	4 to 12	18 to 60	31 to 101	56 to 183
2	8 to 27	41 to 133	68 to 224	124 to 407
3	11 to 35	53 to 175	89 to 293	162 to 533

* Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution. Values presented in the table are based on escalating the SCC values in 2007$ to 2010$ for consistency with other values presented in this notice, and incorporate the escalation of the SCC over time.

Table V-74 Battery Charger Product Class 7: Estimates of Domestic Present Value of CO_2 Emissions Reduction Under TSLs

TSL	Million 2010$			
	5% discount rate, average*	3% discount rate, average*	2.5% discount rate, average*	3% discount rate, 95th percentile*
1	0.091 to 0.300	0.446 to 1	1 to 2	1 to 4
2	0 to 1	1 to 5	2 to 8	4 to 14

* Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution. Values presented in the table are based on escalating the SCC values in 2007$ to 2010$ for consistency with other values presented in this notice, and incorporate the escalation of the SCC over time.

Table V-75 Battery Charger Product Class 8: Estimates of Domestic Present Value of CO_2 Emissions Reduction Under TSLs

TSL	Million 2010$			
	5% discount rate, average*	3% discount rate, average*	2.5% discount rate, average*	3% discount rate, 95th percentile*
1	0.135 to 0.442	0.658 to 2	1 to 4	2 to 7
2	1 to 2	3 to 9	5 to 15	9 to 28
3	1 to 2	3 to 10	5 to 17	9 to 31

* Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution. Values presented in the table are based on escalating the SCC values in 2007$ to 2010$ for consistency with other values presented in this notice, and incorporate the escalation of the SCC over time.

Table V-76 Battery Charger Product Class 10: Estimates of Domestic Present Value of CO_2 Emissions Reduction Under TSLs

TSL	Million 2010$			
	5% discount rate, average*	3% discount rate, average*	2.5% discount rate, average*	3% discount rate, 95th percentile*
1	3 to 10	15 to 51	26 to 85	47 to 155
2	4 to 12	18 to 59	30 to 99	55 to 179
3	4 to 14	21 to 69	35 to 115	64 to 209

* Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution. Values presented in the table are based on escalating the SCC values in 2007$ to 2010$ for consistency with other values presented in this notice, and incorporate the escalation of the SCC over time.

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed in this rulemaking on reducing CO_2 emissions is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider any comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this NOPR the most recent values and analyses resulting from the ongoing interagency review process.

DOE also estimated a range for the cumulative monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from amended standards for Class A EPSs and new standards for non-Class A EPSs and battery chargers. The dollar-per-ton values that DOE used are discussed in section IV.M. Table V–77 presents the cumulative present values for each TSL considered for EPSs, calculated using 7-percent and 3-percent discount rates. Table V–78 presents similar results for the TSLs considered for battery chargers.

Table V-77 Estimates of Present Value of NO_X Emissions Reduction Under External Power Supply TSLs

	TSL 1	TSL 2	TSL 3
	Million 2010$		
Product Class B			
3% discount rate	5 to 53	8 to 83	15 to 151
7% discount rate	3 to 29	5 to 47	8 to 85
Product Classes B, C, D, E			
3% discount rate	6 to 67	10 to 104	18 to 183
7% discount rate	4 to 37	6 to 58	10 to 102
Product Class X			
3% discount rate	1 to 7	1 to 8	2 to 17
7% discount rate	0 to 4	0 to 5	1 to 9
Product Class H			
3% discount rate	0.013 to 0.135	0.014 to 0.145	0.016 to 0.161
7% discount rate	0.007 to 0.069	0.007 to 0.074	0.008 to 0.082

Table V-78 Estimates of Present Value of NO_X Emissions Reduction Under Battery Charger TSLs

	TSL 1	TSL 2	TSL 3	TSL 4
	Million 2010$			
Product Class 1				
3% discount rate	1 to 6	1 to 15	2 to 20	N/A.
7% discount rate	0.344 to 4	1 to 8	1 to 11	N/A.
Product Classes 2, 3, 4				
3% discount rate	3 to 35	8 to 87	20 to 206	22 to 229
7% discount rate	2 to 20	5 to 49	11 to 116	13 to 129
Product Classes 5, 6				
3% discount rate	3 to 30	7 to 67	9 to 88	N/A.
7% discount rate	2 to 16	4 to 37	5 to 48	N/A.
Product Class 7				
3% discount rate	0.073 to 1	0.229 to 2	N/A.	N/A.
7% discount rate	0.042 to 0.431	0.131 to 1	N/A.	N/A.
Product Class 8				
3% discount rate	0.108 to 1	0.459 to 5	1 to 5	N/A
7% discount rate	0.061 to 1	0.260 to 3	0.288 to 3	N/A.
Product Class 10				
3% discount rate	2 to 25	3 to 29	3 to 34	N/A
7% discount rate	1 to 14	2 to 16	2 to 18	N/A.

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the consumer savings calculated for each TSL considered in this rulemaking. Table V–79 shows an example of the calculation of the combined NPV, including benefits from emissions reductions for the case of TSL 1 for battery chargers product classes 2, 3, 4. Table V–80 and Table V–81 present the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced CO_2 and NO_X emissions in each of four valuation

scenarios to the NPV of consumer savings calculated for each TSL considered for EPSs, at both a 7-percent and a 3-percent discount rate. The CO_2 values used in the columns of each table correspond to the four scenarios for the valuation of CO_2 emission reductions presented in section IV.M. Table V–82 and Table V–83 present similar results for the TSLs considered for battery chargers.

Table V-79 Adding Net Present Value of Consumer Savings to Present Value of Monetized Benefits from CO_2 and NO_X Emissions Reductions Under TSL 1 for Battery Chargers Product Classes 2, 3, 4

Category	Present Value billion 2010$	Discount Rate
Benefits		
Operating Cost Savings	1.132	7%
	2.038	3%
CO_2 Reduction Monetized Value (at $4.9/Metric Ton)*	0.062	5%
CO_2 Reduction Monetized Value (at $22.3/Metric Ton)*	0.302	3%
CO_2 Reduction Monetized Value (at $36.5/Metric Ton)*	0.506	2.5%
CO_2 Reduction Monetized Value (at $67.6/Metric Ton)*	0.921	3%
NO_X Reduction Monetized Value (at 2,537 /Ton)*	0.011	7%
	0.019	3%
Total Monetary Benefits **	1.445	7%
	2.360	3%
Costs		
Incremental Installed Costs‡	0.468	7%
	0.783	3%
Net Benefits/Costs		
Including CO_2 and NO_X**	0.977	7%
	1.576	3%

* These values represent global values (in 2010$) of the social cost of CO_2 emissions in 2010 under several scenarios. The values of $4.9, $22.3 and $36.5 per ton are the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The value of $67.6 per ton represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. See section IV.M for details. The value for NO_X (in 2010$) is the average of the low and high values used in DOE's analysis.

** Total Monetary Benefits and Net Benefits/Costs for both the 3% and 7% cases utilize the central estimate of social cost of CO_2 emissions calculated at a 3% discount rate, which is equal to $22.3/ton in 2010 (in 2010$).

‡ Incremental Product Costs represent the total present value (in 2010$) of costs borne by consumers due to increased manufacturing costs from efficiency improvements.

Table V-80 Results of Adding Net Present Value of Consumer Savings (at 7% Discount Rate) to Net Present Value of Monetized Benefits from CO_2 and NO_X Emissions Reductions Under External Power Supply TSLs

Product Class	TSL	Consumer NPV at 7% Discount Rate added to:			
		SCC Value of $4.9/metric ton CO_2* and Low Value for NO_X** billion 2010$	SCC Value of $22.3/metric ton CO_2* and Medium Value for NO_X** billion 2010$	SCC Value of $36.5/metric ton CO_2* and Medium Value for NO_X** billion 2010$	SCC Value of $67.6/metric ton CO_2* and High Value for NO_X** billion 2010$
B	1	0.6905	1.0608	1.3645	1.9944
	2	0.6126	1.1986	1.6792	2.6761
	3	(2.0855)	(1.0208)	(0.1477)	1.6637
B, C, D, and E	1	0.8498	1.3222	1.7100	2.5128
	2	0.8013	1.5402	2.1467	3.4026
	3	(1.9722)	(0.6775)	0.3851	2.5857
X	1	0.1905	0.2411	0.2826	0.3686
	2	0.1903	0.2483	0.2960	0.3947
	3	(0.3333)	(0.2144)	(0.1167)	0.0854
H	1	0.0051	0.0061	0.0069	0.0086
	2	0.0052	0.0063	0.0072	0.0090
	3	0.0039	0.0051	0.0061	0.0081

* These label values represent the global SCC of CO_2 in 2010, in 2010$. Their present values have been calculated with scenario-consistent discount rates. See section IV.M for a discussion of the derivation of these values.
** Low Value corresponds to $450 per ton of NO_X emissions. Medium Value corresponds to $2,537 per ton of NO_X emissions. High Value corresponds to $4,623 per ton of NO_X emissions, in $2010.
Parentheses indicate negative (-) values.

Table V-81 Results of Adding Net Present Value of Consumer Savings (at 3% Discount Rate) to Net Present Value of Monetized Benefits from CO_2 and NO_X Emissions Reductions External Power Supply TSLs

Product Class	TSL	Consumer NPV at 3% Discount Rate added to:			
		SCC Value of $4.9/metric ton CO_2* and Low Value for NO_X** billion 2010$	SCC Value of $22.3/metric ton CO_2* and Medium Value for NO_X** billion 2010$	SCC Value of $36.5/metric ton CO_2* and Medium Value for NO_X** billion 2010$	SCC Value of $67.6/metric ton CO_2* and High Value for NO_X** billion 2010$
B	1	1.3243	1.7050	2.0087	2.6490
	2	1.2912	1.8937	2.3743	3.3876
	3	(3.0146)	(1.9199)	(1.0469)	0.7944
B, C, D, and E	1	1.6651	2.1509	2.5387	3.3549
	2	1.7177	2.4775	3.0840	4.3607
	3	(2.6459)	(1.3146)	(0.2519)	1.9852
X	1	0.3423	0.3943	0.4359	0.5233
	2	0.3454	0.4051	0.4527	0.5531
	3	(0.5022)	(0.3799)	(0.2823)	(0.0768)
H	1	0.0096	0.0106	0.0115	0.0132
	2	0.0100	0.0111	0.0120	0.0139
	3	0.0079	0.0091	0.0101	0.0122

* These label values represent the global SCC of CO_2 in 2010, in 2010$. Their present values have been calculated with scenario-consistent discount rates. See section IV.M for a discussion of the derivation of these values.
** Low Value corresponds to $450 per ton of NO_X emissions. Medium Value corresponds to $2,537 per ton of NO_X emissions. High Value corresponds to $4,623 per ton of NO_X emissions, in $2010.
Parentheses indicate negative (-) values.

Table V-82 Results of Adding Net Present Value of Consumer Savings (at 7% Discount Rate) to Net Present Value of Monetized Benefits from CO_2 and NO_X Emissions Reductions Under Battery Charger TSLs

Product Class	TSL	Consumer NPV at 7% Discount Rate added to:			
		SCC Value of $4.9/metric ton CO_2* and Low Value for NO_X** billion 2010$	SCC Value of $22.3/metric ton CO_2* and Medium Value for NO_X** billion 2010$	SCC Value of $36.5/metric ton CO_2* and Medium Value for NO_X** billion 2010$	SCC Value of $67.6/metric ton CO_2* and High Value for NO_X** billion 2010$
1	1	0.1682	0.2133	0.2503	0.3269
	2	0.3445	0.4496	0.5358	0.7143
	3	(0.4907)	(0.3471)	(0.2292)	0.0148
2, 3, 4	1	0.7274	0.9767	1.1810	1.6052
	2	(0.2789)	0.3325	0.8337	1.8741
	3	(8.6041)	(7.1561)	(5.9692)	(3.5054)
	4	(23.1317)	(21.5222)	(20.2029)	(17.4641)
5, 6	1	0.9217	1.1370	1.3141	1.6792
	2	2.6605	3.1394	3.5334	4.3456
	3	(6.8028)	(6.1757)	(5.6596)	(4.5960)
7	1	0.0712	0.0764	0.0807	0.0897
	2	(0.2953)	(0.2788)	(0.2654)	(0.2375)
8	1	1.6613	1.6690	1.6754	1.6886
	2	(0.9914)	(0.9584)	(0.9313)	(0.8750)
	3	(1.1989)	(1.1622)	(1.1322)	(1.0697)
10	1	0.6571	0.8390	0.9890	1.2971
	2	0.7451	0.9561	1.1301	1.4874
	3	0.8509	1.0971	1.3001	1.7170

* These label values represent the global SCC of CO_2 in 2010, in 2010$. Their present values have been calculated with scenario-consistent discount rates. See section IV.M for a discussion of the derivation of these values.
** Low Value corresponds to $450 per ton of NO_X emissions. Medium Value corresponds to $2,537 per ton of NO_X emissions. High Value corresponds to $4,623 per ton of NO_X emissions, in $2010.
Parentheses indicate negative (-) values.

Table V-83 Results of Adding Net Present Value of Consumer Savings (at 3% Discount Rate) to Net Present Value of Monetized Benefits from CO_2 and NO_X Emissions Reductions Under Battery Charger TSLs

Product Class	TSL	Consumer NPV at 3% Discount Rate added to:			
		SCC Value of $4.9/metric ton CO_2* and Low Value for NO_X** billion 2010$	SCC Value of $22.3/metric ton CO_2* and Medium Value for NO_X** billion 2010$	SCC Value of $36.5/metric ton CO_2* and Medium Value for NO_X** billion 2010$	SCC Value of $67.6/metric ton CO_2* and High Value for NO_X** billion 2010$
1	1	0.3057	0.3521	0.3891	0.4669
	2	0.6329	0.7409	0.8271	1.0086
	3	(0.7438)	(0.5962)	(0.4783)	(0.2301)
2, 3, 4	1	1.3202	1.5765	1.7808	2.2120
	2	(0.2073)	0.4212	0.9224	1.9799
	3	(13.7811)	(12.2925)	(11.1057)	(8.6012)
	4	(38.0226)	(36.3680)	(35.0488)	(32.2648)
5, 6	1	1.6837	1.9051	2.0822	2.4535
	2	4.7717	5.2643	5.6584	6.4842
	3	(10.9602)	(10.3152)	(9.7991)	(8.7176)
7	1	0.1207	0.1261	0.1304	0.1395
	2	(0.4889)	(0.4720)	(0.4586)	(0.4302)
8	1	2.7825	2.7905	2.7969	2.8103
	2	(1.6458)	(1.6118)	(1.5847)	(1.5275)
	3	(1.9915)	(1.9538)	(1.9238)	(1.8603)
10	1	1.2394	1.4266	1.5765	1.8898
	2	1.4089	1.6260	1.8000	2.1635
	3	1.6131	1.8664	2.0693	2.4933

* These label values represent the global SCC of CO_2 in 2010, in 2010$. Their present values have been calculated with scenario-consistent discount rates. See section IV.M for a discussion of the derivation of these values.
** Low Value corresponds to $450 per ton of NO_X emissions. Medium Value corresponds to $2,537 per ton of NO_X emissions. High Value corresponds to $4,623 per ton of NO_X emissions, in $2010.
Parentheses indicate negative (-) values.

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Although adding the value of consumer savings to the values of emission reductions provides a valuable perspective, two issues should be considered. First, the national operating savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use quite different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in the 30-year period after the compliance date. The SCC values, on the other hand, reflect the present value of all future climate-related impacts resulting from the emission of one ton of carbon dioxide in each year. These impacts go well beyond 2100.

7. Other Factors

In determining whether a standard is economically justified, DOE may consider any other factors that it deems relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The California IOUs asked that DOE consider adopting the standard levels proposed by the State of California. (California IOUs, No. 43 at p. 2) In January 2012, the CEC finalized its battery charger energy conservation standards and published energy conservation standards for battery chargers. Prior to finalizing these standards, CEC published a draft staff report outlining the requirements that were ultimately adopted.[68] The standards consist of two metrics; one is a maximum allowance for 24-hour charge and maintenance energy, while the other is a maximum allowance for the combination of maintenance and no battery mode power. DOE analyzed the

[68] Singh, Harinder; Rider, Ken. 2011. *Staff Report Staff Analysis of Battery Chargers and Self-Contained Lighting Controls.* 2011 California Energy Commission, Efficiency and Renewable Energy Division, Appliances and Process Energy Office. CEC–400–2011–001–SF.

CEC's proposal and determined, for each of DOE's product classes, which CSL aligns most closely with the CEC's proposed standards, as explained in section IV.C.2.d above. Table shows this mapping and the national energy savings and net benefits that could be expected to result from federal standards at these levels. Additional results for these CSLs are presented elsewhere in section V.B and in the TSD.

Table V-84 Selected National Impacts of Aligning Federal Standards with California Standards

Product Class	CSL that Best Approximates the CEC Standard	NES (Quad)	NPV 3% (Million 2010$)	NPV 7% (Million 2010$)	NPV 3% added to SCC Value of $22.3/metric ton CO_2* and Medium Value for NO_X at 3%** (Million 2010$)	NPV 7% added to SCC Value of $22.3/metric ton CO_2* and Medium Value for NO_X at 7%** (Million 2010$)
1	CSL 0	0	0	0	0	0
2	CSL 2	0.585	(855)	(679)	(247)	(88)
3	CSL 2	0.169	(966)	(628)	(791)	(457)
4	CSL 2	0.301	(3,909)	(2,415)	(3,595)	(2,110)
5	CSL 3	0.668	(10,000)	(6,230)	(-9,308)	(5,557)
6	CSL 3	0.113	(1,123)	(731)	(1,007)	(618)
7	CSL 1	0.007	119	70	126	76
8	CSL 0	0	0	0	0	0
10	CSL 3	0.312	1,550	789	1,866	1,097

* Social Cost of CO_2 (SCC) in 2010, in 2010$.

** Medium value corresponds to $2,537 per ton of NO_X emissions, in 2010$.

DOE incorporated the CEC's battery charger standards into its analysis by adjusting its base case efficiency distributions, as explained in section IV.G.4 above. It did not choose proposed standard levels with the explicit intention of aligning its standards with the CEC's. Rather, as in all such rulemakings, the proposed levels were selected to meet a number of criteria specified in EPCA. These decisions for each product class grouping are explained in detail in the following section.

C. Proposed Standards

When considering proposed standards, the new or amended energy conservation standard that DOE adopts for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

For today's NOPR, DOE considered the impacts of standards at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the most efficient level that is both technologically feasible and economically justified and saves a significant amount of energy.

DOE separately discusses the benefits and burdens of each TSL for each group of products. To aid the reader in its discussion of the benefits and burdens of each TSL, DOE presents summary tables containing the results of DOE's quantitative analysis for each TSL.

In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that impact whether a given efficiency level is economically justified. These factors include the impacts on identifiable subgroups of consumers, such as low-income households and seniors, who may be disproportionately affected by a national standard. Section V.B.1 presents the estimated impacts of each TSL on these subgroups. DOE also considers impacts on employment stemming from the manufacture of the products subject to standards (see section V.B.2.b), as well as potential indirect impacts in the national economy (see section V.B.3.c).

DOE notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. This undervaluation suggests that regulation that promotes energy efficiency can produce significant net private gains (as well as producing social gains by, for example, reducing pollution). There is evidence that consumers undervalue future energy savings as a result of (1) a lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient savings to warrant delaying or altering; (4) excessive focus on the short term, in the

form of inconsistent weighting of future energy cost savings relative to available returns on other investments; (5) computational or other difficulties associated with the evaluation of relevant tradeoffs; and (6) a divergence in incentives (that is, renter versus owner; builder vs. purchaser). Other literature indicates that with less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher than expected rate between current consumption and uncertain future energy cost savings.

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forego a purchase of a product in the standards case, this decreases sales for product manufacturers and the cost to manufacturers is included in the MIA. Second, DOE accounts for energy savings attributable only to products actually used by consumers in the standards case; if a regulatory option decreases the number of products used by consumers, this decreases the potential energy savings from an energy conservation standard. DOE provides detailed estimates of shipments and changes in the volume of product purchases in chapter 9 of the NOPR TSD. However, DOE's current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or consumer price sensitivity variation according to household income.

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in consumer purchase decisions due to an energy conservation standard, DOE is committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards. DOE has posted a paper that discusses the issue of consumer welfare impacts of appliance energy efficiency standards, and potential enhancements to the methodology by which these impacts are defined and estimated in the regulatory process.[69] DOE welcomes comments on approaches for improved assessment of the consumer welfare impacts of appliance standards.

1. External Power Supplies

a. Product Class B—Direct Operation External Power Supplies

Table V–85 presents a summary of the quantitative impacts estimated for each TSL for EPSs in product class B. As outlined in section V.A.1, DOE is extending the TSLs for product class B to product classes C, D, and E since product class B was the only one directly analyzed and interested parties supported this approach because of the technical similarities among these products. The efficiency levels contained in each TSL are described in section V.A.1.

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[69] Alan Sanstad. Notes on the Economics of Household Energy Consumption and Technology Choice. Lawrence Berkeley National Laboratory. 2010. Available online at: *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf.*

Table V-85 Summary of Results for Product Class B External Power Supplies

Category	TSL 1	TSL 2	TSL 3
National Energy Savings (quads)	0.4579	0.7246	1.3164
NPV of Consumer Benefits (2010$ million)			
3% discount rate	1,228	1,138	(3,292)
7% discount rate	596	463	(2,357)
NPV of Consumer Benefits added to the Value of Emissions Reductions Using Medium Assumptions [i] (2010$ million)			
3% discount rate	1,705	1,894	(1,920)
7% discount rate	1,061	1,199	(1,021)
Industry Impacts			
2.5 W, 18 W, 60 W, and 120 W Rep Units*			
Industry NPV Change (2010$ million)	(62.5) - (38.9)	(81.4) - (35.2)	(123.5) – 17.9
Industry NPV (% change)	(26.9) - (16.8)	(35.1) - (15.2)	(53.2) – 7.7
Cumulative Emissions Reduction			
CO_2 (Mt)	21.7	34.3	62.5
NO_X (kt)	17.9	28.4	51.6
Hg (t)	0.115	0.182	0.331
Value of Cumulative Emissions Reduction			
CO_2 (2010$ billion)**	0.091 to 1.369	0.145 to 2.166	0.263 to 3.936
NO_X – 3% discount rate (2010$ million)	5 to 53	8 to 83	15 to 151
NO_X – 7% discount rate (2010$ million)	3 to 29	5 to 47	8 to 85
Mean LCC Savings* ** (2010$)			
2.5 W rep unit	0.10	0.04	0.02
18 W rep unit	0.68	0.69	(1.19)
60 W rep unit	(0.33)	(0.45)	(1.38)
120 W rep unit	0.60	0.61	(5.49)
Median PBP (years)			
2.5 W rep unit	3.5	4.3	4.3
18 W rep unit	1.2	3.1	8.1
60 W rep unit	6.3	5.4	6.4
120 W rep unit	1.4	1.9	9.1
Distribution of Consumer LCC Impacts			
2.5 W rep unit			
Net Cost (%)	45.9	59.1	61.3
No Impact (%)	8.3	2.4	0.0
Net Benefit (%)	45.8	38.6	38.7
18 W rep unit			
Net Cost (%)	16.7	37.5	74.4
No Impact (%)	28.5	10.2	0.0
Net Benefit (%)	54.9	52.3	25.6
60 W rep unit			
Net Cost (%)	73.7	85.2	92.8
No Impact (%)	18.0	1.3	0.0
Net Benefit (%)	8.3	13.6	7.2
120 W rep unit			
Net Cost (%)	0.1	8.6	100.0

Category	TSL 1	TSL 2	TSL 3
No Impact (%)	21.2	3.0	0.0
Net Benefit (%)	78.7	88.4	0.0
Generation Capacity Reduction (GW)†	0.255	0.404	0.734

Parentheses indicate negative (-) values.
* For the MIA impacts, DOE conservatively presents the impacts for product classes B, C, D, and E as a group versus only the results for product class B for the other analyses. Because there are no technical differences between product class B and the scaled product classes C, D, and E from a manufacturing perspective, there is no product class B "industry" that would be impacted differently than product classes C, D, and E.
** Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.
*** For LCCs, a negative value means an increase in LCC by the amount indicated.
[i] Calculations based on the SCC series corresponding to a value of $22.3/ton in 2010, and a medium value for NO_x corresponding to $2,537/t in 2010$† Changes in 2042.

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DOE first considered TSL 3, which represents the max-tech efficiency level. TSL 3 would save 1.316 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefits would be −$2.357 billion, using a discount rate of 7 percent, and −$3.292 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 62.5 Mt of CO_2, 51.6 kt of NO_X, and 0.331 t of Hg. The estimated monetary value of the cumulative CO_2 emissions reductions at TSL 3 ranges from $0.263 billion to $3.936 billion.

At TSL 3, the average LCC impact is a gain (consumer savings) of $0.02 for the 2.5W unit and a cost (LCC savings decrease) of $1.19 for the 18W unit, $1.38 for the 60W unit, and $5.49 for the 120W unit. The median payback period is 4.3 years for the 2.5W unit, 8.1 years for the 18W unit, 6.4 years for the 60W unit, and 9.1 years for the 120W unit. The fraction of consumers experiencing an LCC benefit is 38.7 percent for the 2.5W unit, 25.6 percent for the 18W unit, 7.2 percent for the 60W unit, and 0 percent for the 120W unit. The fraction of consumers experiencing an LCC cost is 61.3 percent for the 2.5W unit, 74.4 percent for the 18W unit, 92.8 percent for the 60W unit, and 100 percent for the 120W unit.

At TSL 3, the projected change in INPV for direct operation product classes B, C, D, and E as a group ranges from a decrease of $123.5 million to an increase of $17.9 million. At TSL 3, DOE recognizes the risk of very large negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached, as DOE expects, TSL 3 could result in a net loss of 53.2 percent in INPV to manufacturers of EPSs in these product classes. However, as DOE has not identified any domestic manufacturers of direct operation EPSs, it does not project any immediate negative impacts on direct domestic jobs.

The Secretary tentatively concludes that at TSL 3 for EPSs in product class B, the negative NPV of consumer benefits, the economic burden on a significant fraction of consumers due to the large increases in product cost, and the capital conversion costs and profit margin impacts that could result in a very large reduction in INPV, outweigh the benefits of energy savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions. Consequently, the Secretary has tentatively concluded that TSL 3 is not economically justified.

DOE then considered TSL 2. TSL 2 would save 0.7246 quads of energy, an amount DOE considers significant. Under TSL 2, the NPV of consumer benefits would be $463 million, using a discount rate of 7 percent, and $1.138 billion, using a discount rate of 3 percent. Additionally, TSL 2 yields the maximum NPV of consumer benefits added to the social cost of carbon and monetized NO_X emissions reductions [70] with a value of $1.199 billion at a 7-percent discount rate and $1.894 billion at a 3-percent discount rate.

The cumulative emissions reductions at TSL 2 are 34.3 Mt of CO_2, 28.4 kt of NO_X, and 0.182 t of Hg. The estimated monetary value of the cumulative CO_2 emissions reductions at TSL 2 ranges from $0.145 billion to $2.166 billion.

At TSL 2, the average LCC impact is a gain (consumer savings) of $0.04 for the 2.5W unit, $0.69 for the 18W unit, $0.61 for the 120W unit, and a cost (LCC savings decrease) of $0.45 for the 60W unit. The median payback period is 4.3 years for the 2.5W unit, 3.1 years for the 18W unit, 5.4 years for the 60W unit, and 1.9 years for the 120W unit. The fraction of consumers experiencing an LCC benefit is 38.6 percent for the 2.5W unit, 52.3 percent years for the 18W unit, 13.6 percent for the 60W unit, and 88.4 percent for the 120W unit. The fraction of consumers experiencing an LCC cost is 59.1 percent for the 2.5W unit, 37.5 percent for the 18W unit, 85.2 percent for the 60W unit, and 8.6 percent for the 120W unit.

At TSL 2, the projected change in INPV for product classes B, C, D, and E as a group ranges from a decrease of $81.4 million to a decrease of $35.2 million. DOE recognizes the risk of large negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached, as DOE expects, TSL 2 could result in a net loss of 35.1 percent in INPV to manufacturers of EPSs in these product classes.

The Secretary tentatively concludes that at TSL 2 for EPSs in product class B, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the CO_2 emissions reductions outweigh the economic burden on a significant fraction of consumers due to the increases in product cost and the capital conversion costs and profit margin impacts that could result in a reduction in INPV to manufacturers.

After considering the analysis, comments to the preliminary analysis and TSD, and the benefits and burdens of TSL 2, the Secretary tentatively concludes that this TSL will offer the maximum improvement in efficiency that is technologically feasible and economically justified and will result in the significant conservation of energy.

[70] Assuming the social cost of carbon equal to $21.4 per metric ton and NO_X calculated with a medium value of $2,514 per short ton. These values are applied throughout the TSL discussion that follows.

Therefore, DOE today proposes to adopt TSL 2 for EPSs in product class B and, by extension, for EPSs in product classes C, D, and E because of the technical similarities among all of these devices. The proposed new and amended energy conservation standards for these EPSs, expressed as equations for minimum average active-mode efficiency and maximum no-load input power, are shown in Table V–86.

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Table V-86 Proposed Standards for EPSs in Product Classes B, C, D, and E

External Power Supplies – Product Class B: AC-DC, Basic-Voltage		
Nameplate Output Power (P_{out})	**Minimum Average Efficiency in Active Mode** *(expressed as a decimal)*	**Maximum Power in No-Load Mode [W]**
0 to ≤ 1 watt	$\geq 0.5 * P_{out} + 0.16$	≤ 0.100
> 1 to ≤ 49 watts	$\geq 0.071 * \ln(P_{out}) - 0.0014 * P_{out} + 0.67$	≤ 0.100
> 49 watts	≥ 0.880	≤ 0.210
External Power Supplies – Product Class C: AC-DC, Low-Voltage		
Nameplate Output Power (P_{out})	**Minimum Average Efficiency in Active Mode** *(expressed as a decimal)*	**Maximum Power in No-Load Mode [W]**
0 to ≤ 1 watt	$\geq 0.517 * P_{out} + 0.087$	≤ 0.100
> 1 to ≤ 49 watts	$\geq 0.0834 * \ln(P_{out}) - 0.0014 * P_{out} + 0.609$	≤ 0.100
> 49 watts	≥ 0.870	≤ 0.210
External Power Supplies – Product Class D: AC-AC, Basic-Voltage		
Nameplate Output Power (P_{out})	**Minimum Average Efficiency in Active Mode** *(expressed as a decimal)*	**Maximum Power in No-Load Mode**
0 to ≤ 1 watt	$\geq 0.5 * P_{out} + 0.16$	≤ 0.210
> 1 to ≤ 49 watts	$\geq 0.071 * \ln(P_{out}) - 0.0014 * P_{out} + 0.67$	≤ 0.210
> 49 watts	≥ 0.880	≤ 0.210
External Power Supplies – Product Class E: AC-AC, Low-Voltage		
Nameplate Output Power (P_{out})	**Minimum Average Efficiency in Active Mode** *(expressed as a decimal)*	**Maximum Power in No-Load Mode**
0 to ≤ 1 watt	$\geq 0.517 * P_{out} + 0.087$	≤ 0.210
> 1 to ≤ 49 watts	$\geq 0.0834 * \ln(P_{out}) - 0.0014 * P_{out} + 0.609$	≤ 0.210
> 49 watts	≥ 0.870	≤ 0.210

b. Product Class X—Multiple-Voltage External Power Supplies

Table V–87 presents a summary of the quantitative impacts estimated for each TSL for multiple-voltage EPSs. The efficiency levels contained in each TSL are described in section V.A.

Table V-87 Proposed Standards for Product Class X External Power Supplies

Category	TSL 1	TSL 2	TSL 3
National Energy Savings (quads)	0.0625	0.0718	0.1470
NPV of Consumer Benefits (2010$ million)			
3% discount rate	329	330	(533)
7% discount rate	178	176	(364)
NPV of Consumer Benefits added to the Value of Emissions Reductions Using Medium Assumption[i] (2010$ million)			
3% discount rate	394	405	(380)
7% discount rate	241	248	(214)
Industry Impacts			
Product Class X			
Industry NPV Change (2010$ million)	(0.7) - (0.4)	(12.8) - (12.0)	(17.9) - (4.6)
Industry NPV (% change)	(1.7) - (1.0)	(28.9) - (27.1)	(40.5) - (10.3)
Cumulative Emissions Reduction			
CO_2 (Mt)	2.95	3.38	6.92
NO_X (kt)	2.43	2.79	5.71
Hg (t)	0.015	0.018	0.036
Value of Cumulative Emissions Reduction			
CO_2 (2010$ billion)*	0.012 to 0.187	0.014 to 0.215	0.029 to 0.440
NO_X – 3% discount rate (2010$ million)	1 to 7	1 to 8	2 to 17
NO_X – 7% discount rate (2010$ million)	0 to 4	0 to 5	1 to 9
Mean LCC Savings** (2010$)	2.05	2.07	(3.09)
Median PBP (years)	0.4	4.7	13.2
Distribution of Consumer LCC Impacts			
Net Cost (%)	0.0	51.0	95.0
No Impact (%)	95.0	0.0	0.0
Net Benefit (%)	5.0	49.0	5.0
Generation Capacity Reduction (GW)[†]	0.035	0.040	0.082

Parentheses indicate negative (-) values.
* Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.
** For LCCs, a negative value means an increase in LCC by the amount indicated.
[i] Calculations based on the SCC series corresponding to a value of $22.3/ton in 2010, and a medium value for NO_x corresponding to $2,537/t in 2010$[†] Changes in 2042.

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DOE first considered TSL 3, which represents the max-tech efficiency level. TSL 3 would save 0.147 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefits would be −$364 million, using a discount rate of 7 percent, and −$533 million, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 6.92 Mt of CO_2, 5.71 kt of NO_X, and 0.036 t of Hg. The estimated monetary value of the cumulative CO_2 emissions reductions at TSL 3 ranges from $0.029 billion to $0.440 billion.

At TSL 3, the average LCC impact is a cost (LCC savings decrease) of $3.09. The median payback period is 13.2 years. The fraction of consumers experiencing an LCC benefit is 5 percent while the fraction of consumers experiencing an LCC cost is 95 percent.

At TSL 3, the projected change in INPV ranges from a decrease of $17.9 million to a decrease of $4.6 million. At TSL 3, DOE recognizes the risk of very large negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high range of impacts is reached, as DOE expects, TSL 3 could result in a net loss of 40.5 percent in INPV to manufacturers of multiple-voltage EPSs. However, as DOE has not identified any domestic manufacturers of multiple-voltage EPSs, it does not project any immediate negative impacts on direct domestic jobs.

The Secretary tentatively concludes that at TSL 3 for multiple-voltage EPSs, the negative NPV of consumer benefits, the economic burden on a significant fraction of consumers due to the large

increases in product cost, and the capital conversion costs and profit margin impacts that could result in a very large reduction in INPV outweigh the benefits of energy savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions. Consequently, the Secretary has tentatively concluded that TSL 3 is not economically justified.

DOE then considered TSL 2. TSL 2 would save 0.0718 quads of energy, an amount DOE considers significant. Under TSL 2, the NPV of consumer benefits would be $176 million, using a discount rate of 7 percent, and $330 million, using a discount rate of 3 percent. Additionally, TSL 2 yields the maximum NPV of consumer benefits added to the social cost of carbon and monetized NO_X emissions reductions with a value of $248 million at a 7-percent discount rate and $405 million at a 3-percent discount rate.

At TSL 2, the average LCC impact is a gain (consumer savings) of $2.07. The median payback period is 4.7 years. The fraction of consumers experiencing an LCC benefit is 49 percent while the fraction of consumers experiencing an LCC cost is 51 percent.

The cumulative emissions reductions at TSL 2 are 3.38 Mt of CO_2, 2.79 kt of NO_X, and 0.018 t of Hg. The estimated monetary value of the cumulative CO_2 emissions reductions at TSL 2 ranges from $0.014 billion to $0.215 billion.

At TSL 2, the projected change in INPV ranges from a decrease of $12.8 million to a decrease of $12.0 million. At TSL 2, DOE recognizes the risk of large negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached, as DOE expects, TSL 2 could result in a net loss of 28.9 percent in INPV to manufacturers of multiple-voltage EPSs.

The Secretary tentatively concludes that at TSL 2 for multiple-voltage EPSs, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the CO_2 emissions reductions outweigh the economic burden on a significant fraction of consumers due to the increases in product cost and the capital conversion costs and profit margin impacts that could result in a reduction in INPV for manufacturers.

After considering the analysis, comments to the preliminary analysis and TSD, and the benefits and burdens of TSL 2, the Secretary tentatively concludes that this TSL will offer the maximum improvement in efficiency that is technologically feasible and economically justified and will result in the significant conservation of energy. Therefore, DOE today proposes to adopt TSL 2 for multiple-voltage EPSs. The proposed new and amended energy conservation standard for multiple-voltage EPSs, expressed as an equation for minimum average active-mode efficiency and maximum no-load input power, is shown in Table V–88.

Table V-88 Proposed Standards for Multiple-Voltage External Power Supplies

External Power Supplies – Product Class X: Multiple Voltage		
Nameplate Output Power (P_{out})	**Minimum Average Efficiency in Active Mode** *(expressed as a decimal)*	**Maximum Power in No-Load Mode [W]**
0 to ≤ 1 watt	$\geq 0.497 * P_{out} + 0.067$	≤ 0.300
> 1 to ≤ 49 watts	$\geq 0.075 * \ln(P_{out}) + 0.561$	≤ 0.300
> 49 watts	≥ 0.860	≤ 0.300

c. Product Class H—High-Power External Power Supplies

Table V–89 presents a summary of the quantitative impacts estimated for each TSL for high-power EPSs. The efficiency levels contained in each TSL are described in section V.A.

Table V-89 Proposed Standards for High-Power External Power Supplies

Category	TSL 1	TSL 2	TSL 3
National Energy Savings (quads)	0.0013	0.0014	0.0015
NPV of Consumer Benefits (2010$ million)			
3% discount rate	9.4	9.7	7.6
7% discount rate	4.8	5.0	3.6
NPV of Consumer Benefits added to the Value of Emissions Reductions Using Medium Assumption[i] (2010$ million)			
3% discount rate	10.6	11.1	9.1
7% discount rate	6.1	6.3	5.1
Industry Impacts			
Product Class H			
Industry NPV Change (2010$ million)	(0.05) - (0.04)	(0.05) - (0.04)	(0.05) - (0.03)
Industry NPV (% change)	(45.5) - (32.7)	(44.0) - (33.8)	(47.3) - (24.4)
Cumulative Emissions Reduction			
CO_2 (Mt)	0.054	0.058	0.065
NO_X (kt)	0.045	0.048	0.053
Hg (t)	0.000	0.000	0.000
Value of Cumulative Emissions Reduction			
CO_2 (2010$ billion)*	0.000 to 0.004	0.000 to 0.004	0.000 to 0.004
NO_X – 3% discount rate (2010$ million)	0.013 to 0.135	0.014 to 0.145	0.016 to 0.161
NO_X – 7% discount rate (2010$ million)	0.007 to 0.069	0.007 to 0.074	0.008 to 0.082
Mean LCC Savings** (2010$)	124.82	129.08	92.96
Median PBP (years)	0.0	0.2	2.5
Distribution of Consumer LCC Impacts			
Net Cost (%)	0.0	0.0	16.9
No Impact (%)	0.0	0.0	0.0
Net Benefit (%)	100.0	100.0	83.1
Generation Capacity Reduction (GW)[†]	0.001	0.001	0.001

Parentheses indicate negative (-) values.
* Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.
** For LCCs, a negative value means an increase in LCC by the amount indicated.
[i] Calculations based on the SCC series corresponding to a value of $22.3/ton in 2010, and a medium value for NO_x corresponding to $2,537/t in 2010$[†] Changes in 2042.

DOE first considered TSL 3, which represents the max-tech efficiency level. TSL 3 would save 0.0015 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefits would be $3.6 million, using a discount rate of 7 percent, and $7.6 million, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 0.065 Mt of CO_2, 0.053 kt of NO_X, and less than 0.0001 t of Hg. The estimated monetary value of the cumulative CO_2 emissions reductions at TSL 3 ranges from less than $0.0001 to $0.004 billion.

At TSL 3, the average LCC impact is a gain (consumer savings) of $92.96. The median payback period is 2.5 years. The fraction of consumers experiencing an LCC benefit is 83.1 percent while the fraction of consumers experiencing an LCC cost is 16.9 percent.

At TSL 3, the projected change in INPV ranges from a decrease of $0.05 million to a decrease of $0.03 million. At TSL 3, DOE recognizes the risk of very large negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached, as DOE expects, TSL 3 could result in a net loss of 47.3 percent in INPV to manufacturers of high-power EPSs. However, as DOE has not identified any domestic manufacturers of high power EPSs, it does not project any immediate negative impacts on direct domestic jobs.

The Secretary tentatively concludes that at TSL 3 for high-power EPSs, the additional considerations of the potential negative impacts of a standard at this max-tech TSL outweigh the benefits of energy savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions. DOE notes that it scaled results for product class B to estimate the cost and efficiency of this max-tech CSL. Consequently, DOE is unaware of any product that can achieve this CSL in either product class B or H. Thus, although DOE's analysis indicates that the max-tech efficiency level is achievable, there is a risk that unforeseen obstacles remain to creating an EPS at this TSL.

Additionally, setting a standard at TSL 3 would create a discontinuity in the average efficiency standards for EPSs. For product class B devices, the average efficiency standard is constant

for nameplate output power ratings greater than 49 watts up to 250 watts. At 250 watts, where product class H begins, the average efficiency standard would increase by 4 percent if DOE set standards for this product class at the max-tech TSL. This discontinuity in efficiency between the two product classes would be the result of the proposed standards for product class B EPSs being equivalent to the best-in-market CSL equation while the proposed standards for product class H would be equivalent to the max-tech CSL equation for high-power EPSs. DOE believes that setting a standard with a large discontinuity between these product classes is not consistent with EPS design trends.

In contrast, by applying the same level of stringency, scaled for the representative unit voltage, to all EPSs with output power greater than 250 watts, the achievable efficiency in EPS designs that have an output power above 49 watts remains nearly constant. This result occurs because the switching and conduction losses associated with the EPS remain proportionally the same with the increase in output power, which creates a relatively flat achievable efficiency above 49 watts. If DOE were to adopt a level that created a discontinuity in the efficiency levels, it would ignore this trend and set a higher efficiency standard between two product classes despite numerous technical similarities. Consequently, the Secretary has tentatively concluded that TSL 3 is not justified.

DOE then considered TSL 2. TSL 2 would save 0.0014 quads of energy, an amount DOE considers significant. Under TSL 2, the NPV of consumer benefits would be $5.0 million, using a discount rate of 7 percent, and $9.7 million, using a discount rate of 3 percent.

At TSL 2, the average LCC impact is a gain (consumer savings) of $129.08. The median payback period is 0.2 years. The fraction of consumers experiencing an LCC benefit is 100 percent while the fraction of consumers experiencing an LCC cost is 0 percent.

The cumulative emissions reductions at TSL 2 are 0.058 Mt of CO_2, 0.048 kt of NO_X, and less than 0.0001 t of Hg. The estimated monetary value of the cumulative CO_2 emissions reductions at TSL 2 ranges from less than $0.0001 to $0.004 billion. Additionally, TSL 2 yields the maximum NPV of consumer benefits added to the social cost of carbon and monetized NO_X emissions reductions with a value of $6.3 million at a 7-percent discount rate and $11.1 million at a 3-percent discount rate.

At TSL 2, the projected change in INPV ranges from a decrease of $0.04 million to a decrease of $0.04 million. At TSL 2, DOE recognizes the risk of large negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached, as DOE expects, TSL 2 could result in a net loss of 44.0 percent in INPV to manufacturers of high-power EPSs.

The Secretary tentatively concludes that at TSL 2 for high-power EPSs, the benefits of energy savings, positive NPV of consumer benefits, positive LCC savings for all consumers, emission reductions, and the estimated monetary value of the CO_2 emissions reductions outweigh the economic burden of the capital conversion costs and profit margin impacts that could result in a reduction in INPV for manufacturers. The Secretary also tentatively concludes that this TSL will offer the maximum improvement in efficiency that is technologically feasible and economically justified and will result in the significant conservation of energy. Therefore, DOE today proposes to adopt TSL 2 for high-power EPSs. The proposed new and amended energy conservation standards for high-power EPSs, expressed as a discrete standard for minimum average active-mode efficiency and maximum no-load input power, are shown in Table V–90.

Table V-90 Proposed Standards for High-Power External Power Supplies

External Power Supplies – Product Class H: High-Power		
Nameplate Output Power (P_{out})	**Minimum Average Efficiency in Active Mode** *(expressed as a decimal)*	**Maximum Power in No-Load Mode [W]**
> 250 watts	0.875	0.500

d. Product Class N—Indirect-Operation External Power Supplies

Product class N consists of indirect-operation EPSs, which are EPSs that serve only as battery charger components and do not operate an end-use consumer product or power any auxiliary functions of an end-use consumer product on their own. See section IV.A.3 above. The applications that use these EPSs consist of applications using motors and detachable batteries, which correspond to MADB non-Class A EPSs and other applications that use Class A EPSs. DOE believes that the Class A and non-Class A devices in product class N are technically equivalent. Because of this technical equivalency, DOE believes that EPSs of both types can achieve the same efficiency level for the same cost and, thus, grouped these EPSs into one product class for analysis. DOE is not aware of any capacity- or performance-related features of the non-Class A devices in product class N that would enable DOE to create a separate class for this group of devices. 42 U.S.C. 6295(q)

Of the estimated 75 million EPSs in this product class sold annually, 46 percent are Class A and are already subject to the Federal standards prescribed by EISA 2007. The remaining 54 percent are non-Class A EPSs, which are not currently subject to Federal standards. Table V–91 lists those applications that DOE has identified as product class N EPSs and indicates how many of each are subject to the current Federal standard for Class A EPSs and how many are non-Class A devices. DOE seeks comment on the accuracy of its estimates regarding the proportions of these applications that ship with indirect-operation EPSs versus direct-operation EPSs. (See Issue 17 under ''Issues on Which DOE Seeks Comment'' in Section VII.E of this notice.)

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Table V-91 Applications of Indirect Operation External Power Supplies

Status	Application	Estimated EPS Shipment Volume in 2009 (thousands of units)	
		Indirect Operation (Product Class N)	Direct Operation (Other Product Classes)
Currently Subject to Federal Standards (Class A)	MP3 Players	3,609	401
	Personal Digital Assistants	525	1,225
	In-Vehicle GPS	2,845	316
	Handheld GPS	136	15
	Bluetooth Headsets	13,900	0
	Mobile Phones	4,712	42,408
	Smartphones	6,174	14,407
	Digital Cameras	2,470	1,567
Not Currently Subject to Federal Standards (Non-Class A)	RC Toys	350	0
	Handheld Vacuums	4,000	0
	Stick Vacuums	1,000	0
	Robotic Vacuums	2,615	0
	Air Mattress Pumps	250	0
	Flashlights/Lanterns	100	0
	Rechargeable Garden Care Products	8	0
	Lawn Mowers	15	0
	Rechargeable Toothbrushes	15,000	0
	Rechargeable Water Jets	100	0
	Beard and Moustache Trimmers	1,763	5,288
	Hair Clippers	3,413	1,138
	Shavers	6,492	2,164
	DIY Power Tools (Integral)	4,675	0
	DIY Power Tools (External)	351	0
	Electric Scooters	175	0
	Motorized Bicycles	105	0

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First, DOE considered setting standards for EPSs in product class N at an efficiency level greater than the level prescribed by EISA for all Class A EPSs. While such a standard would theoretically yield energy savings, DOE tentatively believes that these savings would not be cost justified. In the case of these particular devices, DOE believes that a more effective way to obtain additional energy savings is to

regulate the battery chargers of which product class N EPSs are a part, since all of the power flowing through an indirect-operation EPS flows to the battery charger. In contrast, a direct-operation EPS's output power flows to both a battery charger and an end-use consumer product, which means that regulating only the battery charger would not adequately address the entire system. Thus, by not setting new standards for product class N EPSs beyond the existing EISA standard level, DOE believes that manufacturers will have greater flexibility in designing more efficient battery chargers without adversely impacting their utility and performance. This approach would help ensure that consumers and the Nation as a whole will realize cost-effective savings either through improvements to the EPS or other components in the battery charger. Thus, DOE tentatively believes that any cost-effective energy savings for these products will be realized through the battery charger standard itself.

Next, DOE considered standards equivalent to the current EISA standards for Class A EPSs. This approach would represent no change in standards for Class A devices and a new standard for non-Class A devices in product class N. (Note that all Class A EPSs, including those in product class N, cannot, by virtue of EPCA's anti-backsliding provision, be subject to a standard less stringent than the current Class A standard prescribed by EISA 2007 (see 42 U.S.C. 6295(o)(1)).)

As indicated in section IV.A.1 above, DOE has not identified any non-Class A EPSs in product class N that are not already subject to the California EPS standard. As a result, all of these non-Class A EPSs that fall into product class N must already comply with the California standard. The California standard for non-Class A EPSs is at the same efficiency level as the Federal Class A EPS standard. California also relies on the Federal test procedure to verify compliance with its EPS standards. Since California requires identical standards and test methods for non-Class A EPSs as DOE does for Class A, DOE considers these standards to be equivalent.

Additionally, manufacturers have alluded informally to DOE that the California standard is the ''de facto'' national standard for their non-Class A EPSs because they typically sell the same EPS for a given product line throughout the country. The California IOUs concurred with this view. (California IOUs, No. 43 at p. 9) Thus, DOE believes that the non-Class A EPSs in product class N already meet the Federal standards currently in place for Class A EPSs and seeks comment on the accuracy of this belief. (See Issue 18 under ''Issues on Which DOE Seeks Comment'' in section VII.E of this notice.)

Under the assumption that all non-Class A EPSs in product class N already meet the Federal standards currently in place for Class A EPSs, a new standard at the EISA level for these products would not yield significant energy savings and, therefore, would not be cost-justified. Therefore, DOE is not proposing new standards for indirect operation EPSs today. If DOE receives new information indicating that this assumption is incorrect, i.e., that manufacturers are not producing all indirect operation EPSs at or above the EISA efficiency levels, DOE will reconsider this decision and evaluate potential new standards for this product class.

2. Battery Chargers

a. Low-Energy, Inductive Charging Battery Chargers, Product Class 1

Table V–92 presents a summary of the quantitative impacts estimated for each TSL for low-energy, inductive charging battery chargers. The efficiency levels contained in each TSL are described in section V.A.

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Table V-92 Summary of Results for Battery Charger Product Class 1

Category	TSL 1	TSL 2	TSL 3
National Energy Savings (quads)	0.0557	0.1298	0.1775
NPV of Consumer Benefits (2010$ million)			
3% discount rate	294	606	(781)
7% discount rate	157	318	(527)
NPV of Consumer Benefits added to the Value of Emissions Reductions Using Medium Assumption[i] (2010$ million)			
3% discount rate	352	741	(596)
7% discount rate	213	450	(347)
Industry Impacts			
Battery Charger-Product Class 1			
Industry NPV Change (2010$ million)	(41) - 1	(101) – 1	(441) – 29
Industry NPV (% change)	(8.4) - 0.1	(20.6) – 0.3	(89.7) – 5.9
Cumulative Emissions Reduction			
CO_2 (Mt)	2.62	6.11	8.36
NO_X (kt)	2.17	5.05	6.9
Hg (t)	0.014	0.032	0.044
Value of Cumulative Emissions Reduction			
CO_2 (2010$ billion)*	0.011 to 0.167	0.026 to 0.388	0.035 to 0.531
NO_X – 3% discount rate (2010$ million)	1 to 6	1 to 15	2 to 20
NO_X – 7% discount rate (2010$ million)	0 to 4	1 to 8	1 to 11
Mean LCC Savings** (2010$)	0.76	1.52	(2.87)
Median PBP (years)	1.2	1.7	8.5
Distribution of Consumer LCC Impacts			
Net Cost (%)	0.0	0.0	98.2
No Impact (%)	22.2	11.1	0.0
Net Benefit (%)	77.8	88.9	1.8
Generation Capacity Reduction (GW)[†]	0.031	0.072	0.099

Parentheses indicate negative (-) values.
* Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.
** For LCCs, a negative value means an increase in LCC by the amount indicated.
[i] Calculations based on the SCC series corresponding to a value of $22.3/ton in 2010, and a medium value for NO_x corresponding to $2,537/t in 2010$[†] Changes in 2042.

DOE first considered TSL 3, which represents the max-tech efficiency level. TSL 3 would save 0.178 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefits would be −$527 million, using a discount rate of 7 percent, and −$781 million, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 8.36 Mt of CO_2, 6.90 kt of NO_X, and 0.044 t of Hg. The estimated monetary value of the cumulative CO_2 emissions reductions at TSL 3 ranges from $0.035 billion to $0.531 billion.

At TSL 3, the average LCC impact is a cost (LCC savings decrease) of $2.87 for low-energy inductive charging battery chargers. The median payback period is 8.5 years. The fraction of consumers experiencing an LCC benefit is 1.8 percent and the fraction of consumers experiencing an LCC cost is 98.2 percent.

At TSL 3, the projected change in INPV ranges from a decrease of $441 million to an increase of $29 million. At TSL 3, DOE recognizes the risk of very large negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached, as DOE expects, TSL 3 could result in a net loss of 89.7 percent in INPV to manufacturers of battery chargers.

The Secretary tentatively concludes that at TSL 3 for low-energy, inductive charging battery chargers, the benefits of energy savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the negative NPV of consumer benefits, the economic burden on a significant fraction of consumers due to the large increases in product cost, and the capital conversion costs and profit margin impacts that could result in a very large reduction in INPV for the manufacturers. Consequently, the Secretary has tentatively concluded that TSL 3 is not economically justified.

DOE then considered TSL 2. TSL 2 would save 0.130 quads of energy, an amount DOE considers significant. Under TSL 2, the NPV of consumer benefits would be $318 million, using a discount rate of 7 percent, and $606 million, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 2 are 6.11 Mt of CO_2, 5.05 kt of NO_X, and 0.032 t of Hg. The estimated monetary value of the cumulative CO_2

emissions reductions at TSL 2 ranges from $0.026 billion to $0.388 billion. Additionally, the NPV of consumer benefits added to the social cost of carbon and monetized NO_X emissions reductions is maximized with a value of $741 million at a 3-percent discount rate and $450 million at a 7-percent discount rate at TSL 2.

At TSL 2, the average LCC impact is a savings of $1.52 for low-energy inductive charging battery chargers. The median payback period is 1.7 years. The fraction of consumers experiencing an LCC benefit is 88.9 percent and the fraction of consumers experiencing an LCC cost is 0 percent.

At TSL 2, the projected change in INPV ranges from a decrease of $101 million to an increase of $1 million. DOE recognizes the risk of large negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached, as DOE expects, TSL 2 could result in a net loss of 20.6 percent in INPV to manufacturers of low-energy inductive charging battery chargers.

The Secretary tentatively concludes that at TSL 2 for low-energy, inductive charging battery chargers, the benefits of energy savings, positive NPV of consumer benefits, positive mean LCC savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions outweigh the economic burden of the capital conversion costs and profit margin impacts that could result in a reduction in INPV for manufacturers.

After considering the analysis, comments to the September 2010 notice and the preliminary TSD, and the benefits and burdens of TSL 2, the Secretary tentatively concludes that this TSL will offer the maximum improvement in efficiency that is technologically feasible and economically justified and will result in the significant conservation of energy. Therefore, DOE today proposes to adopt TSL 2 for low-energy inductive charging battery chargers. The proposed new energy conservation standard for low-energy inductive charging battery chargers is shown in Table V–97.

TABLE V–93—PROPOSED STANDARD FOR PRODUCT CLASS 1

Product class	Maximum unit energy consumption (kWh/yr)
1 (Low-Energy, Inductive)	3.04

b. Low-Energy, Non-Inductive Charging Battery Chargers, Product Classes 2, 3, and 4

Table presents a summary of the quantitative impacts estimated for each TSL for low-energy, non-inductive charging battery chargers. The efficiency levels contained in each TSL are described in section V.A.

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Table V-94 Summary of Results for Battery Charger Product Classes 2, 3, and 4

Category	TSL 1	TSL 2	TSL 3	TSL 4
National Energy Savings (quads)	0.3091	0.7588	1.7967	1.9971
NPV of Consumer Benefits (2010$ million)				
3% discount rate	1,255	(367)	(14,159)	(38,442.72)
7% discount rate	664	(435)	(8,973)	(23,542.09)
NPV of Consumer Benefits added to the Value of Emissions Reductions Using Medium Assumptions[i] (2010$ million)				
3% discount rate	1,576	421	(12,293)	(36,368)
7% discount rate	977	333	(7,156)	(21,522)
Industry Impacts				
Battery Charger -Product Classes 2, 3, and 4				
Industry NPV Change (2010$ million)	(4,897) – 15	(6,055) – 134	(10,863) – 528	(14,562) - 975
Industry NPV (% change)	(11.2) - 0.0	(13.8) – 0.3	(24.8) – 1.2	(33.2) – 2.2
Cumulative Emissions Reduction				
CO_2 (Mt)	14.7	35.9	85.1	94.6
NO_X (kt)	12.1	29.7	70.3	78.1
Hg (t)	0.078	0.191	0.452	0.502
Value of Cumulative Emissions Reduction				
CO_2 (2010$ billion)*	0.062 to 0.921	0.151 to 2.260	0.358 to 5.352	0.398 to 5.949
NO_X – 3% discount rate (2010$ million)	3 to 35	8 to 87	20 to 206	22 to 229
NO_X – 7% discount rate (2010$ million)	2 to 20	5 to 49	11 to 116	13 to 129
Mean LCC Savings** (2010$)				
PC2 – Low-Energy, Low-Voltage	0.16	(0.12)	(1.81)	(4.54)
PC3 – Low-Energy, Medium-Voltage	0.35	0.35	(2.12)	(2.15)
PC4 – Low-Energy, High-Voltage	0.43	0.43	(2.73)	(10.14)
Median PBP (years)				
PC2 – Low-Energy, Low-Voltage	0.5	5.2	8.5	16.9
PC3 – Low-Energy, Medium-Voltage	3.9	3.9	21.9	21.5
PC4 – Low-Energy, High-Voltage	3.0	3.0	13.8	37.6
Distribution of Consumer LCC Impacts				
PC2 – Low-Energy, Low-Voltage				
Net Cost (%)	1.0	26.8	87.1	96.8
No Impact (%)	82.0	60.1	2.9	0.0
Net Benefit (%)	17.0	13.1	10.0	3.2
PC3 – Low-Energy, Medium-Voltage				
Net Cost (%)	8.9	8.9	65.8	85.8
No Impact (%)	82.8	82.8	20.9	0.0
Net Benefit (%)	8.3	8.3	13.3	14.2
PC4 – Low-Energy, High-Voltage				
Net Cost (%)	3.4	3.4	46.4	98.2
No Impact (%)	90.7	90.7	51.5	0.0
Net Benefit (%)	5.8	5.8	2.2	1.8
Generation Capacity Reduction (GW)[†]	0.17	0.42	1.00	1.11

Parentheses indicate negative (-) values.

* Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.

** For LCCs, a negative value means an increase in LCC by the amount indicated.

[i] Calculations based on the SCC series corresponding to a value of $22.3/ton in 2010, and a medium value for NO_x corresponding to $2,537/t in 2010$[†] Changes in 2042.

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DOE first considered TSL 4, which represents the max-tech efficiency level. TSL 4 would save 1.9971 quads of energy, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefits would be −$23.54 billion, using a discount rate of 7 percent, and −$38.44 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 94.6 Mt of CO_2, 78.1 kt of NO_X, and 0.502 t of Hg. The estimated monetary value of the cumulative CO_2 emissions reductions at TSL 4 ranges from $0.398 billion to $5.949 billion.

At TSL 4, the average LCC impact is a cost (LCC savings decrease) of $4.54, $2.15, and $10.14 for low-energy non-inductive charging battery charger product classes 2, 3, and 4 respectively. The median payback period is 16.9, 21.5, and 37.6 years for product classes 2, 3, and 4 respectively. The fraction of consumers experiencing an LCC benefit is 3.2, 14.2, and 1.8 percent for each product class and the fraction of consumers experiencing an LCC cost is 96.8, 85.8, and 98.2 percent for each product class.

At TSL 4, the projected change in INPV ranges from a decrease of $14.56 billion to an increase of $0.98 billion. At TSL 4, DOE recognizes the risk of very large negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached, as DOE expects, TSL 4 could result in a net loss of 33.2 percent in INPV to manufacturers of battery chargers.

The Secretary tentatively concludes that at TSL 4 for low-energy, non-inductive charging battery chargers, the benefits of energy savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the negative NPV of consumer benefits, the economic burden on a significant fraction of consumers due to the large increases in product cost, and the capital conversion costs and profit margin impacts that could result in a very large reduction in INPV for the manufacturers. Consequently, the Secretary has tentatively concluded that TSL 4 is not economically justified.

DOE then considered TSL 3, which represents the best-in-market efficiency level. TSL 3 would save 1.797 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefits would be −$8.97 billion, using a discount rate of 7 percent, and −$14.16 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 85.1 Mt of CO_2, 70.3 kt of NO_X, and 0.452 t of Hg. The estimated monetary value of the cumulative CO_2 emissions reductions at TSL 3 ranges from $0.358 billion to $5.352 billion.

At TSL 3, the average LCC impact is a cost (LCC savings decrease) of $1.81, $2.12, and $2.73 for low-energy non-inductive charging battery charger product classes 2, 3, and 4 respectively. The median payback period is 8.5, 21.9, and 13.8 years for product classes 2, 3, and 4 respectively. The fraction of consumers experiencing an LCC benefit is 10.0, 13.3, and 2.2 percent for each product class and the fraction of consumers experiencing an LCC cost is 87.1, 65.8, and 46.4 percent for each product class.

At TSL 3, the projected change in INPV ranges from a decrease of $10.86 billion to an increase of $0.53 billion. At TSL 3, DOE recognizes the risk of large negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached, as DOE expects, TSL 3 could result in a net loss of 24.8 percent in INPV to manufacturers of battery chargers.

The Secretary tentatively concludes that at TSL 3 for low-energy, non-inductive charging battery chargers, the benefits of energy savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the negative NPV of consumer benefits, the economic burden on a significant fraction of consumers due to the large increases in product cost, and the capital conversion costs and profit margin impacts that could result in a very large reduction in INPV for the manufacturers. Consequently, the Secretary has tentatively concluded that TSL 3 is not economically justified.

DOE then considered TSL 2, which represents an intermediate efficiency level. TSL 2 would save 0.759 quads of energy, an amount DOE considers significant. Under TSL 2, the NPV of consumer benefits would be −$435 million, using a discount rate of 7 percent, and −$367 million, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 2 are 35.9 Mt of CO_2, 29.7 kt of NO_X, and 0.191 t of Hg. The estimated monetary value of the cumulative CO_2 emissions reductions at TSL 2 ranges from $0.151 billion to $2.260 billion.

At TSL 2, the average LCC impact is a cost (LCC savings decrease) of $0.12 for product class 2 and a savings (LCC savings increase) of $0.35 and $0.43 product classes 3 and 4 respectively. The median payback period is 5.2, 3.9, and 3.0 years for product classes 2, 3, and 4 respectively. The fraction of consumers experiencing an LCC benefit is 17.0, 8.3, and 5.8 percent for each product class and the fraction of consumers experiencing an LCC cost is 26.8, 8.9, and 3.4 percent for each product class.

At TSL 2, the projected change in INPV ranges from a decrease of $6.06 billion to an increase of $0.13 billion. At TSL 2, DOE recognizes the risk of large negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached, as DOE expects, TSL 2 could result in a net loss of 13.8 percent in INPV to manufacturers of battery chargers.

The Secretary tentatively concludes that at TSL 2 for low-energy, non-inductive charging battery chargers, the benefits of energy savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the negative NPV of consumer benefits, the economic burden on a significant fraction of consumers due to the increases in product cost, and the capital conversion costs and profit margin impacts that could result in a large reduction in INPV for the manufacturers. Consequently, the Secretary has tentatively concluded that TSL 2 is not economically justified.

DOE then considered TSL 1, which represents another intermediate efficiency level. Relative to TSL 2, the efficiency level for product class 2 has decreased, while the efficiency levels for product classes 3 and 4 are the same. TSL 1 would save 0.309 quads of energy, an amount DOE considers significant. Under TSL 1, the NPV of consumer benefits would be $664 million, using a discount rate of 7 percent, and $1.255 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 1 are 14.7 Mt of CO_2, 12.1 kt of NO_X, and 0.078 t of Hg. The estimated monetary value of the cumulative CO_2 emissions reductions at TSL 1 ranges from $0.062 billion to $0.921 billion. Additionally, the NPV of consumer benefits added to the social cost of carbon and monetized NO_X emissions reductions is maximized with a value of $1.576 billion at a 3-percent discount rate and $0.977 billion at a 7-percent discount rate at TSL 1.

At TSL 1, the average LCC impact is a savings (LCC savings increase) of $0.16, $0.35, and $0.43 for low-energy non-inductive charging battery charger product classes 2, 3, and 4 respectively. The median payback period is 0.5, 3.9, and 3.0 years for product classes 2, 3, and 4 respectively. The fraction of consumers experiencing an LCC benefit is 17.0, 8.3, and 5.8 percent for each product class and the fraction of

consumers experiencing an LCC cost is 1.0, 8.9, and 3.4 percent for each product class.

At TSL 1, the projected change in INPV ranges from a decrease of $4.90 billion to an increase of $0.02 billion. DOE recognizes the risk of negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached, TSL 1 could result in a net loss of 11.2 percent in INPV to manufacturers of low-energy non-inductive charging battery chargers.

The Secretary tentatively concludes that at TSL 1 for low-energy, non-inductive charging battery chargers, the benefits of energy savings, positive NPV of consumer benefits, positive mean LCC savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions outweigh the economic burden of the capital conversion costs and profit margin impacts that could result in a reduction in INPV for manufacturers.

After considering the analysis, comments to the September 2010 notice and the preliminary TSD, and the benefits and burdens of TSL 1, the Secretary tentatively concludes that this TSL will offer the maximum improvement in efficiency that is technologically feasible and economically justified and will result in the significant conservation of energy. Therefore, DOE today proposes to adopt TSL 1 for low-energy non-inductive charging battery chargers. The proposed new energy conservation standards for low-energy, non-inductive charging battery chargers, expressed as equations for minimum unit energy consumption, are shown in Table V–99.

Table V-95 Proposed Standard for Product Classes 2, 3, and 4

Product Class	Maximum Unit Energy Consumption(kWh/yr)
2 (Low-Energy, Low-Voltage)	$= 0.2095(E_{batt}^{*}) + 5.87$
3 (Low-Energy, Medium-Voltage	For $E_{batt} < 9.74$ Wh, $= 4.68$ For $E_{batt} \geq 9.74$ Wh, $= 0.0933(E_{batt}) + 3.77$
4 (Low-Energy, High-Voltage)	For $E_{batt} < 9.71$ Wh, $= 9.03$ For $E_{batt} \geq 9.71$ Wh, $= 0.2411(E_{batt}) + 6.69$

c. Medium-Energy Battery Chargers, Product Classes 5 and 6

Table V–96 presents a summary of the quantitative impacts estimated for each TSL for medium-energy battery chargers. The efficiency levels contained in each TSL are described in section V.A.

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Table V-96 Summary of Results for Battery Charger Product Classes 5 and 6

Category	TSL 1	TSL 2	TSL 3
National Energy Savings (quads)	0.2679	0.5962	0.7809
NPV of Consumer Benefits (2010$ million)			
3% discount rate	1,628	4,648	(11,123)
7% discount rate	867	2,539	(6,961)
NPV of Consumer Benefits added to the Value of Emissions Reductions Using Medium Assumptions[i] (2010$ million)			
3% discount rate	1,905	5,264	(10,315)
7% discount rate	1,137	3,139	(6,176)
Industry Impacts			
Battery Charger -Product Classes 5 and 6			
Industry NPV Change (2010$ million)	(327) – 6	(225) – (40)	(1,314) – 692
Industry NPV (% change)	(21.0) – 0.3	(14.5) – (2.5)	(84.8) – 43.7
Cumulative Emissions Reduction			
CO_2 (Mt)	12.4	27.4	35.9
NO_X (kt)	10.2	22.6	29.6
Hg (t)	0.065	0.143	0.187
Value of Cumulative Emissions Reduction			
CO_2 (2010$ billion)*	0.053 to 0.795	0.118 to 1.770	0.154 to 2.318
NO_X – 3% discount rate (2010$ million)	3 to 30	7 to 67	9 to 88
NO_X – 7% discount rate (2010$ million)	2 to 16	4 to 37	5 to 48
Mean LCC Savings** (2010$)			
PC5 – Medium-Energy, Low-Voltage	9.69	33.79	(104.58)
PC6 – Medium-Energy, High-Voltage	9.96	40.78	(86.76)
Median PBP (years)			
PC5 – Medium-Energy, Low-Voltage	1.7	0.0	53.4
PC6 – Medium-Energy, High-Voltage	1.2	0.0	20.8
Distribution of Consumer LCC Impacts			
PC5 – Medium-Energy, Low-Voltage			
Net Cost (%)	1.3	0.0	78.6
No Impact (%)	72.0	20.1	13.0
Net Benefit (%)	26.8	79.9	8.4
PC6 – Medium-Energy, High-Voltage			
Net Cost (%)	0.0	0.0	85.4
No Impact (%)	64.6	35.2	13.0
Net Benefit (%)	35.4	64.8	1.6
Generation Capacity Reduction (GW)[†]	0.15	0.33	0.43

Parentheses indicate negative (-) values.
* Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.
** For LCCs, a negative value means an increase in LCC by the amount indicated.
[i] Calculations based on the SCC series corresponding to a value of $22.3/ton in 2010, and a medium value for NO_x corresponding to $2,537/t in 2010$[†] Changes in 2042.

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DOE first considered TSL 3, which represents the max-tech efficiency level. TSL 3 would save 0.781 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefits would be −$6.96 billion, using a discount rate of 7 percent, and −$11.12 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 35.9 Mt of CO_2, 29.6 kt of NO_X, and 0.187 t of Hg. The estimated monetary value of the cumulative CO_2 emissions reductions at TSL 3 ranges from $0.154 billion to $2.318 billion.

At TSL 3, the average LCC impact is a cost (LCC savings decrease) of $104.58 and $86.76 for medium-energy battery charger product classes 5 and 6 respectively. The median payback period is 53.4 and 20.8 years for product classes 5 and 6 respectively. The fraction of consumers experiencing an

LCC benefit is 8.4 and 1.6 percent for product classes 5 and 6, respectively, and the fraction of consumers experiencing an LCC cost is 78.6 and 85.4 percent for product classes 5 and 6, respectively.

At TSL 3, the projected change in INPV ranges from a decrease of $1.31 billion to an increase of $0.69 billion. At TSL 3, DOE recognizes the risk of very large negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached, as DOE expects, TSL 3 could result in a net loss of 84.8 percent in INPV to manufacturers of battery chargers.

The Secretary tentatively concludes that at TSL 3 for medium-energy battery chargers, the benefits of energy savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the negative NPV of consumer benefits, the economic burden on a significant fraction of consumers due to the large increases in product cost, and the capital conversion costs and profit margin impacts that could result in a very large reduction in INPV for manufacturers. Consequently, the Secretary has tentatively concluded that TSL 3 is not economically justified.

DOE then considered TSL 2, which represents the best-in-market efficiency level. TSL 2 would save 0.596 quads of energy, an amount DOE considers significant. Under TSL 2, the NPV of consumer benefits would be $2.54 billion, using a discount rate of 7 percent, and $4.65 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 2 are 27.4 Mt of CO_2, 22.6 kt of NO_X, and 0.143 t of Hg. The estimated monetary value of the cumulative CO_2 emissions reductions at TSL 2 ranges from $0.118 billion to $1.770 billion. Additionally, the NPV of consumer benefits added to the social cost of carbon and monetized NO_X emissions reductions is maximized with a value of $5.264 billion at a 3-percent discount rate and $3.139 billion at a 7-percent discount rate at TSL 2.

At TSL 2, the average LCC impact is a savings (LCC savings increase) of $33.79 and $40.78 for medium-energy battery charger product classes 5 and 6, respectively. The median payback period is 0.0 and 0.0 years for product classes 5 and 6, respectively. The fraction of consumers experiencing an LCC benefit is 79.9 and 64.8 percent for each product class and the fraction of consumers experiencing an LCC cost is 0.0 and 0.0 percent for each product class.

At TSL 2, the projected change in INPV ranges from a decrease of $225 million to a decrease of $40 million. DOE recognizes the risk of negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached, TSL 2 could result in a net loss of 14.5 percent in INPV to manufacturers of medium-energy battery chargers.

The Secretary tentatively concludes that at TSL 2 for medium-energy battery chargers, the benefits of energy savings, positive NPV of consumer benefits, positive mean LCC savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions outweigh the economic burden of the capital conversion costs and profit margin impacts that could result in a reduction in INPV for manufacturers.

After considering the analysis, comments to the September 2010 notice and the preliminary TSD, and the benefits and burdens of TSL 2, the Secretary tentatively concludes that this TSL will offer the maximum improvement in efficiency that is technologically feasible and economically justified and will result in the significant conservation of energy. Therefore, DOE today proposes to adopt TSL 2 for medium-energy battery chargers. The proposed new energy conservation standards for medium-energy battery chargers, expressed as equations for minimum unit energy consumption, are shown in Table V–101.

Table V-97 Proposed Standard for Product Classes 5 and 6

Product Class	Maximum Unit Energy Consumption (kWh/yr)
5 (Medium-Energy, Low-Voltage)	For $E_{batt} < 355.18$ Wh, = 20.06 For $E_{batt} \geq 355.18$ Wh, = $0.0219(E_{batt}) + 12.28$
6 (Medium-Energy, High-Voltage)	For $E_{batt} < 239.48$ Wh, = 30.37 For $E_{batt} \geq 239.48$ Wh, = $0.0495(E_{batt}) + 18.51$

d. High-Energy Battery Chargers, Product Class 7

Table V–98 presents a summary of the quantitative impacts estimated for each TSL for high-energy battery chargers. The efficiency levels contained in each TSL are described in section V.A.

Table V-98 Summary of Results for Battery Charger Product Class 7

Category	TSL 1	TSL 2
National Energy Savings (quads)	0.0067	0.0209
NPV of Consumer Benefits (2010$ million)		
3% discount rate	119	(493)
7% discount rate	70	(299)
NPV of Consumer Benefits added to the Value of Emissions Reductions Using Medium Assumptions[i] (2010$ million)		
3% discount rate	126	(472)
7% discount rate	76	(279)
Industry Impacts		
Battery Charger-Product Class 7		
Industry NPV Change (2010$ million)	(4) – 47	(136) – 23
Industry NPV (% change)	(0.4) – 4.5	(13.1) – 2.2
Cumulative Emissions Reduction		
CO_2 (Mt)	0.312	0.975
NO_X (kt)	0.259	0.808
Hg (t)	0.002	0.006
Value of Cumulative Emissions Reduction		
CO_2 (2010$ billion)*	0.001 to 0.019	0.004 to 0.061
NO_X – 3% discount rate (2010$ million)	0.073 to 1	0.229 to 2
NO_X – 7% discount rate (2010$ million)	0.042 to 0.431	0.131 to 1
Mean LCC Savings** (2010$)	38.26	(127.30)
Median PBP (years)	0.0	27.2
Distribution of Consumer LCC Impacts		
Net Cost (%)	0.0	100.0
No Impact (%)	56.6	0.0
Net Benefit (%)	43.5	0.0
Generation Capacity Reduction (GW)[†]	0.003	0.010

Parentheses indicate negative (-) values.
* Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.
** For LCCs, a negative value means an increase in LCC by the amount indicated.
[i] Calculations based on the SCC series corresponding to a value of $22.3/ton in 2010, and a medium value for NO_x corresponding to $2,537/t in 2010$[†] Changes in 2042.

DOE first considered TSL 2, which represents the max-tech efficiency level. TSL 2 would save 0.021 quads of energy, an amount DOE considers significant. Under TSL 2, the NPV of consumer benefits would be −$299 million, using a discount rate of 7 percent, and −$493 million, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 2 are 0.975 Mt of CO_2, 0.808 kt of NO_X, and 0.006 t of Hg. The estimated monetary value of the cumulative CO_2 emissions reductions at TSL 2 ranges from $0.004 billion to $0.061 billion.

At TSL 2, the average LCC impact is a cost (LCC savings decrease) of $127.30 for high-energy battery chargers. The median payback period is 27.2 years. The fraction of consumers experiencing an LCC benefit is 0.0 percent and the fraction of consumers experiencing an LCC cost is 100.0 percent.

At TSL 2, the projected change in INPV ranges from a decrease of $136 million to an increase of $23 million. At TSL 2, DOE recognizes the risk of large negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached, as DOE expects, TSL 2 could result in a net loss of 13.1 percent in INPV to manufacturers of battery chargers.

The Secretary tentatively concludes that at TSL 2 for high-energy battery chargers, the benefits of energy savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the negative NPV of consumer benefits, the economic burden on a significant fraction of consumers due to the large increases in product cost, and the capital conversion costs and profit margin impacts that could result in a large reduction in INPV for the manufacturers. Consequently, the Secretary has tentatively concluded that TSL 2 is not economically justified.

DOE then considered TSL 1, which is the best-in-market efficiency level. TSL 1 would save 0.007 quads of energy, an amount DOE considers significant. Under TSL 1, the NPV of consumer benefits would be $70 million, using a discount rate of 7 percent, and $119 million, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 1 are 0.312 Mt of CO_2, 0.259 kt of NO_X, and 0.002 t of Hg. The

estimated monetary value of the cumulative CO_2 emissions reductions at TSL 1 ranges from $0.001 billion to $0.019 billion. Additionally, the NPV of consumer benefits added to the social cost of carbon and monetized NO_X emissions reductions is maximized with a value of $126 million at a 3-percent discount rate and $76 million at a 7-percent discount rate at TSL 1.

At TSL 1, the average LCC impact is a savings of $38.26 for high-energy battery chargers. The median payback period is 0.0 years. The fraction of consumers experiencing an LCC benefit is 43.5 percent and the fraction of consumers experiencing an LCC cost is 0.0 percent.

At TSL 1, the projected change in INPV ranges from a decrease of $4 million to an increase of $47 million. DOE recognizes the risk of negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached, as DOE expects, TSL 1 could result in a net loss of 0.4 percent in INPV to manufacturers of high-energy battery chargers.

The Secretary tentatively concludes that at TSL 1 for high-energy battery chargers, the benefits of energy savings, positive NPV of consumer benefits, positive mean LCC savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions outweigh the economic burden associated with the potential direct employment losses, capital conversion costs and profit margin impacts that could result in a reduction in INPV for manufacturers.

After considering the analysis, comments to the September 2010 notice and the preliminary TSD, and the benefits and burdens of TSL 1, the Secretary tentatively concludes that this TSL will offer the maximum improvement in efficiency that is technologically feasible and economically justified and will result in the significant conservation of energy. Therefore, DOE today proposes to adopt TSL 1 for high-energy battery chargers. The proposed new energy conservation standard for high-energy battery chargers, expressed as an equation for minimum unit energy consumption, is shown in Table V–103.

Table V-99 Proposed Standard for Product Class 7

Product Class	Maximum Unit Energy Consumption (kWh/yr)
7 (High-Energy)	$= 0.502(E_{batt}) + 4.53$

e. Battery Chargers With a DC Input of Less Than 9 V, Product Class 8

Table V–100 presents a summary of the quantitative impacts estimated for each TSL for battery chargers with a DC input less than 9 V. The efficiency levels contained in each TSL are described in section V.A.

Table V-100 Summary of Results for Battery Charger Product Class 8

Category	TSL 1	TSL 2	TSL 3
National Energy Savings (quads)	0.0096	0.0408	0.0453
NPV of Consumer Benefits (2010$ million)			
3% discount rate	2,780	(1,654)	(2,001)
7% discount rate	1,659	(1,000)	(1,208)
NPV of Consumer Benefits added to the Value of Emissions Reductions Using Medium Assumptions[i] (2010$ million)			
3% discount rate	2,790	(1,612)	(1,954)
7% discount rate	1,669	(958)	(1,162)
Industry Impacts			
Battery Charger -Product Class 8			
Industry NPV change (2010$ million)	(75) - 1,300	4 – 78	(61) - (30)
Industry NPV (% change)	(1.3) - 22.8	0.1 – 1.4	(1.1) - (0.5)
Cumulative Emissions Reduction			
CO_2 (Mt)	0.46	1.95	2.16
NO_X (kt)	0.38	1.61	1.78
Hg (t)	0.002	0.010	0.011
Value of Cumulative Emissions Reduction			
CO_2 (2010$ billion)*	0.002 to 0.029	0.008 to 0.122	0.009 to 0.136
NO_X – 3% discount rate (2010$ million)	0 to 1	0 to 5	1 to 5
NO_X – 7% discount rate (2010$ million)	0 to 1	0 to 3	0 to 3
Mean LCC Savings** (2010$)	3.04	(1.96)	(2.31)
Median PBP (years)	0.0	0.0	24.9
Distribution of Consumer LCC Impacts			
Net Cost (%)	0.0	40.0	55.4
No Impact (%)	50.0	10.0	0.0
Net Benefit (%)	50.0	50.0	44.6
Generation Capacity Reduction (GW)[†]	0.005	0.023	0.025

Parentheses indicate negative (-) values.
* Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.
** For LCCs, a negative value means an increase in LCC by the amount indicated.
[i] Calculations based on the SCC series corresponding to a value of $22.3/ton in 2010, and a medium value for NO_x corresponding to $2,537/t in 2010$[†] Changes in 2042.

DOE first considered TSL 3, which represents the max-tech efficiency level. TSL 3 would save 0.045 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefits would be −$1.21 billion, using a discount rate of 7 percent, and −$2.00 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 2.16 Mt of CO_2, 1.78 kt of NO_X, and 0.011 t of Hg. The estimated monetary value of the cumulative CO_2 emissions reductions at TSL 3 ranges from $0.009 billion to $0.136 billion.

At TSL 3, the average LCC impact is a cost (LCC savings decrease) of $2.31 for battery chargers with a DC input of less than 9 V. The median payback period is 24.9 years. The fraction of consumers experiencing an LCC benefit is 44.6 percent and the fraction of consumers experiencing an LCC cost is 55.4 percent.

At TSL 3, the projected change in INPV ranges from a decrease of $61 million to a decrease of $30 million. At TSL 3, DOE recognizes the risk of large negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached, as DOE expects, TSL 3 could result in a net loss of 1.1 percent in INPV to manufacturers of battery chargers.

The Secretary tentatively concludes that at TSL 3 for battery chargers with a DC input of less than 9 V, the benefits of energy savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the negative NPV of consumer benefits and the economic burden on a significant fraction of consumers due to the large increases in product cost, and the capital conversion costs and profit margin impacts that could result in a reduction in INPV for the manufacturers. Consequently, the Secretary has tentatively concluded that TSL 3 is not economically justified.

DOE then considered TSL 2, which represents the best-in-market efficiency level. TSL 2 would save 0.041 quads of energy, an amount DOE considers significant. Under TSL 2, the NPV of consumer benefits would be −$1.00 billion, using a discount rate of 7 percent, and −$1.65 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 2 are 1.95 Mt of CO_2, 1.61 kt of NO_X, and 0.010 t of Hg. The estimated

monetary value of the cumulative CO_2 emissions reductions at TSL 2 ranges from $0.008 billion to $0.122 billion.

At TSL 2, the average LCC impact is a cost (LCC savings decrease) of $1.96 for battery chargers with a DC input of less than 9 V. The median payback period is 0.0 years. The fraction of consumers experiencing an LCC benefit is 50.0 percent and the fraction of consumers experiencing an LCC cost is 40.0 percent.

At TSL 2, the projected change in INPV ranges from an increase of $4 million to an increase of $78 million. At TSL 2, DOE believes there are minimal risks of negative impacts on manufacturers and expects that TSL 2 could result in a net gain of 0.1 percent in INPV to manufacturers of battery chargers.

The Secretary tentatively concludes that at TSL 2 for battery chargers with a DC input of less than 9 V, the benefits of energy savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the negative NPV of consumer benefits and the economic burden on a significant fraction of consumers due to the large increases in product cost. Consequently, the Secretary has tentatively concluded that TSL 2 is not economically justified.

DOE then considered TSL 1, which is an intermediate efficiency level. TSL 1 would save 0.010 quads of energy, an amount DOE considers significant. Under TSL 1, the NPV of consumer benefits would be $1.66 billion, using a discount rate of 7 percent, and $2.78 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 1 are 0.46 Mt of CO_2, 0.38 kt of NO_X, and 0.002 t of Hg. The estimated monetary value of the cumulative CO_2 emissions reductions at TSL 1 ranges from $0.002 billion to $0.029 billion. Additionally, the NPV of consumer benefits added to the social cost of carbon and monetized NO_X emissions reductions is maximized with a value of $2.790 billion at a 3-percent discount rate and $1.669 billion at a 7 percent discount rate at TSL 1.

At TSL 1, the average LCC impact is a savings of $3.04 for battery chargers with a DC input of less than 9 V. The median payback period is 0.0 years. The fraction of consumers experiencing an LCC benefit is 50.0 percent and the fraction of consumers experiencing an LCC cost is 0.0 percent.

At TSL 1, the projected change in INPV ranges from a decrease of $75 million to an increase of $1,300 million. DOE recognizes the risk of negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached, as DOE expects, TSL 1 could result in a net loss of 1.3 percent in INPV to manufacturers of battery chargers with a DC input less than 9 V.

The Secretary tentatively concludes that at TSL 1 for battery chargers with a DC input of less than 9 V, the benefits of energy savings, positive NPV of consumer benefits, positive mean LCC savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions outweigh the economic burden associated with the capital conversion costs and profit margin impacts that could result in a reduction in INPV for manufacturers.

After considering the analysis, comments to the September 2010 notice and the preliminary TSD, and the benefits and burdens of TSL 1, the Secretary tentatively concludes that this TSL will offer the maximum improvement in efficiency that is technologically feasible and economically justified and will result in the significant conservation of energy. Therefore, DOE today proposes to adopt TSL 1 for battery chargers with a DC input less than 9 V. The proposed new energy conservation standard for battery chargers with a DC input less than 9 V is shown in Table V–105.

TABLE V–101—PROPOSED STANDARD FOR PRODUCT CLASS 8

Product class	Maximum unit energy consumption (kWh/yr)
8 (Low-Voltage DC Input)	0.66

DOE is also considering an alternative approach for product class 8 because of the considerations expressed in section IV.C.2.i above. This approach is same as the proposal that DOE has for product class 9, discussed in the following section.

f. Battery Chargers With a DC Input Greater Than 9 V, Product Class 9

DOE ran a number of analyses in an attempt to ascertain whether an appropriate efficiency level could be created for product class 9. A battery charger is in product class 9 if it operates using a DC input source greater than 9 V, it is unable to operate from a universal serial bus (USB) connector, and a manufacturer does not package, recommend, or sell a wall adapter for the device. Such products would be in-vehicle battery chargers that can operate outside of a vehicle. After completing its engineering analysis for these products, DOE ran the LCC analysis. These analyses projected that no efficiency level would be likely to exhibit a positive LCC savings. The LCC results showed a cost (LCC savings decrease) of $0.08 and $0.24 for CSLs 1 and 2 respectively. That fact, combined with the minimal UECs found for products in this category, leads DOE to tentatively believe that there would be no economically justifiable TSLs that correspond to the efficiency levels found in the engineering analysis for this product class.

g. AC Output Battery Chargers, Product Class 10

Table V–102 presents a summary of the quantitative impacts estimated for each TSL for battery chargers with an AC output. The efficiency levels contained in each TSL are described in section V.A.

Table V-102 Summary of Results for Battery Charger Product Class 10

Category	TSL 1	TSL 2	TSL 3
National Energy Savings (quads)	0.2308	0.2678	0.3124
NPV of Consumer Benefits (2010$ million)			
3% discount rate	1,192	1,354	1,550
7% discount rate	611	692	789
NPV of Consumer Benefits added to the Value of Emissions Reductions Using Medium Assumptions[i] (2010$ million)			
3% discount rate	1,427	1,626	1,866
7% discount rate	839	956	1,097
Industry Impacts			
Battery Charger-Product Class 10			
Industry NPV Change (2010$ million)	(81) - (0)	(100) - (2)	(126) - (5)
Industry NPV (% change)	(13.2) - (0.1)	(16.4) - (0.4)	(20.5) - (0.9)
Cumulative Emissions Reduction			
CO_2 (Mt)	10.3	11.9	13.9
NO_X (kt)	8.46	9.81	11.5
Hg (t)	0.068	0.079	0.092
Value of Cumulative Emissions Reduction			
CO_2 (2010$ billion)*	0.045 to 0.672	0.052 to 0.780	0.060 to 0.910
NO_X – 3% discount rate (2010$ million)	2 to 25	3 to 29	3 to 34
NO_X – 7% discount rate (2010$ million)	1 to 14	2 to 16	2 to 18
Mean LCC Savings** (2010$)	6.41	7.26	8.30
Median PBP (years)	1.3	1.4	1.5
Distribution of Consumer LCC Impacts			
Net Cost (%)	0.0	0.0	0.0
No Impact (%)	13.0	13.0	13.0
Net Benefit (%)	87.0	87.0	87.0
Generation Capacity Reduction (GW)[†]	0.11	0.12	0.14

Parentheses indicate negative (-) values.
* Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.
** For LCCs, a negative value means an increase in LCC by the amount indicated.
[i] Calculations based on the SCC series corresponding to a value of $22.3/ton in 2010, and a medium value for NO_x corresponding to $2,537/t in 2010$[†] Changes in 2042.

DOE first considered TSL 3, which is the max-tech efficiency level. TSL 3 would save 0.312 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefits would be $789 million, using a discount rate of 7 percent, and $1.55 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 13.9 Mt of CO_2, 11.5 kt of NO_X, and 0.092 t of Hg. The estimated monetary value of the cumulative CO_2 emissions reductions at TSL 3 ranges from $0.060 billion to $0.910 billion. Additionally, the NPV of consumer benefits added to the social cost of carbon and monetized NO_X emissions reductions is maximized with a value of $1.866 billion at a 3-percent discount rate and $1.097 billion at a 7-percent discount rate at TSL 3.

At TSL 3, the average LCC impact is a savings of $8.30 for AC battery output battery chargers. The median payback period is 1.5 years. The fraction of consumers experiencing an LCC benefit is 87.0 percent and the fraction of consumers experiencing an LCC cost is 13.0 percent.

At TSL 3, the projected change in INPV ranges from a decrease of $126 million to a decrease of $5 million. DOE recognizes the risk of large negative impacts if manufacturers' expectations concerning reduced profit margins are realized. If the high end of the range of impacts is reached, as DOE expects, TSL 3 could result in a net loss of 20.5 percent in INPV to manufacturers of AC output battery chargers.

The Secretary tentatively concludes that at TSL 3 for AC output battery chargers, the benefits of energy savings, positive NPV of consumer benefits, positive mean LCC savings, emission reductions, and the estimated monetary value of the CO_2 emissions reductions outweigh the economic burden associated with the capital conversion costs and profit margin impacts that could result in a reduction in INPV for manufacturers.

After considering the analysis, comments to the September 2010 notice and the preliminary TSD, and the benefits and burdens of TSL 3, the Secretary tentatively concludes that this TSL will offer the maximum improvement in efficiency that is technologically feasible and economically justified and will result in

the significant conservation of energy. Therefore, DOE today proposes to adopt TSL 3 for AC output battery chargers. The proposed new energy conservation standards for AC output battery chargers is shown in Table V–108.

Table V-103 Proposed Standard for Product Class 10

Product Class	Maximum Unit Energy Consumption (kWh/yr)
10a (AC Input, AC Output, without AVR)	For $E_{batt} < 37.2$ Wh, = 2.54 For $E_{batt} \geq 37.2$ Wh, = $0.0733(E_{batt}) - 0.18$
10b (AC Input, AC Output, with AVR)	For $E_{batt} < 37.2$ Wh, = 6.18 For $E_{batt} \geq 37.2$ Wh, = $0.0733(E_{batt}) + 3.45$

3. Summary of Benefits and Costs (Annualized) of Proposed Standards for External Power Supplies

The benefits and costs of today's proposed standards for EPSs can also be expressed in terms of annualized values over the 2013–2042 period. The annualized monetary values are the sum of: (1) The annualized national economic value (expressed in 2010$) of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase costs, which is another way of representing consumer NPV); and (2) the monetary value of the benefits of emission reductions, including CO_2 emission reductions.[71] The value of the CO_2 reductions, otherwise known as the Social Cost of Carbon (SCC), is calculated using a range of values per metric ton of CO_2 developed by a recent Federal interagency process. The monetary costs and benefits of cumulative emissions reductions are reported in 2010$ to permit comparisons with the other costs and benefits in the same dollar units.

Although combining the values of operating savings and CO_2 reductions provides a useful perspective, two issues should be considered. First, the national operating savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use quite different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2013–2042. The SCC values, on the other hand, reflect the present value of future climate-related impacts resulting from the emission of one metric ton of carbon dioxide in each year. These impacts go well beyond 2100.

Estimates of annualized benefits and costs of the proposed standards for EPSs are shown in Table V–104. Using a 7-percent discount rate and the SCC value of $22.3/ton in 2010 (in 2010$), the cost of the energy efficiency standards proposed in today's NOPR is $251.9 million per year in increased equipment installed costs, while the annualized benefits are $325.2 million per year in reduced equipment operating costs, $52.3 million in CO_2 reductions, and $3.2 million in reduced NO_X emissions. In this case, the net benefit amounts to $128.7 million per year. Using a 3-percent discount rate and the SCC value of $22.3/metric ton in 2010 (in 2010$), the cost of the energy efficiency standards proposed in today's NOPR is $247.3 million per year in increased equipment installed costs, while the benefits are $348.2 million per year in reduced operating costs, $52.3 million in CO_2 reductions, and $3.3 million in reduced NO_X emissions. At a 3-percent discount rate, the net benefit amounts to $156.6 million per year.

[71] DOE used a two-step calculation process to convert the time-series of costs and benefits into annualized values. First, DOE calculated a present value in 2011, the year used for discounting the NPV of total consumer costs and savings, for the time-series of costs and benefits using discount rates of three and seven percent for all costs and benefits except for the value of CO_2 reductions. For the latter, DOE used a range of discount rates. From the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in 2013, which yields the same present value. The fixed annual payment is the annualized value. Although DOE calculated annualized values, this does not imply that the time-series of cost and benefits from which the annualized values were determined would be a steady stream of payments.

Table V-104 Annualized Benefits and Costs of Proposed Standards for EPSs

	Discount Rate	Primary Estimate*	Low Net Benefits Estimate*	High Net Benefits Estimate*
		Monetized (million 2010$/year)		
Benefits				
Operating Cost Savings	7%	325.2	309.1	341.1
	3%	348.2	329.5	367.3
CO_2 Reduction at $4.9/t**	5%	14.1	14.1	14.1
CO_2 Reduction at $22.3/t**	3%	52.3	52.3	52.3
CO_2 Reduction at $36.5/t**	2.5%	81.4	81.4	81.4
CO_2 Reduction at $67.6/t**	3%	159.6	159.6	159.6
NO_X Reduction at $2,537/t**	7%	3.2	3.2	3.2
	3%	3.3	3.3	3.3
Total†	7% plus CO_2 range	342.5 to 488.0	326.4 to 471.9	358.4 to 503.9
	7%	380.7	364.6	396.6
	3%	403.9	385.1	422.9
	3% plus CO_2 range	365.7 to 511.2	346.9 to 492.5	384.7 to 530.3
Costs				
Incremental Product Costs	7%	251.9	251.9	251.9
	3%	247.3	247.3	247.3
Total Net Benefits				
Total†	7% plus CO_2 range	90.5 to 236.1	74.4 to 220.0	106.5 to 252.0
	7%	128.7	112.6	144.7
	3%	156.6	137.9	175.7
	3% plus CO_2 range	118.4 to 264.0	99.7 to 245.2	137.5 to 283.0

* The results include benefits to consumers which accrue after 2042 from the products purchased from 2013 through 2042. Costs incurred by manufacturers, some of which may be incurred prior to 2013 in preparation for the rule, are indirectly included as part of incremental equipment costs. The Primary, Low Benefits, and High Benefits Estimates utilize forecasts of energy prices from the AEO2010 Reference case, Low Estimate, and High Estimate, respectively

** The CO_2 values represent global monetized values (in 2010$) of the social cost of CO_2 emissions in 2010 under several scenarios. The values of $4.9, $22.3, and $36.5 per ton are the averages of SCC distributions calculated using 5-percent, 3-percent, and 2.5-percent discount rates, respectively. The value of $67.6 per ton represents the 95th percentile of the SCC distribution calculated using a 3-percent discount rate. The value for NO_X (in 2010$) is the average of the low and high values used in DOE's analysis.

† Total Benefits for both the 3-percent and 7-percent cases are derived using the SCC value calculated at a 3-percent discount rate, which is $22.3/ton in 2010 (in 2010$). In the rows labeled as "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

4. Summary of Benefits and Costs (Annualized) of Proposed Standards for Battery Chargers

The benefits and costs of today's proposed standards for battery chargers can also be expressed in terms of annualized values over the 2013–2042 period. The annualized monetary values are the sum of: (1) The annualized national economic value (expressed in 2010$) of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase costs, which is another way of representing consumer NPV); and (2) the monetary value of the benefits of emission reductions, including CO_2 emission reductions.[72] The value of the CO_2 reductions, otherwise known as the Social Cost of Carbon (SCC), is calculated using a range of values per metric ton of CO_2 developed by a recent Federal interagency process. The monetary costs and benefits of cumulative emissions reductions are reported in 2010$ to permit comparisons with the other costs and benefits in the same dollar units.

Although combining the values of operating savings and CO_2 reductions provides a useful perspective, two issues should be considered. First, the national operating savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use quite different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2013–2042. The SCC values, on the other hand, reflect the present value of future climate-related impacts resulting from the emission of one metric ton of carbon dioxide in each year. These impacts go well beyond 2100.

Estimates of annualized benefits and costs of the proposed standards for battery chargers are shown in Table V–104. Using a 7-percent discount rate and the SCC value of $22.3/ton in 2010 (in 2010$), the standards proposed in today's NOPR result in $110.0 million per year in equipment costs savings, and the annualized benefits are $447.2 million per year in reduced equipment operating costs, $71.6 million in CO_2 reductions, and $4.3 million in reduced NO_X emissions. In this case, the net benefit amounts to $633.0 million per year. Using a 3-percent discount rate and the SCC value of $22.3/metric ton in 2010 (in 2010$), the standards proposed in today's NOPR result in $107.9 million per year in equipment costs savings, and the benefits are $485.2 million per year in reduced operating costs, $71.6 million in CO_2 reductions, and $4.5 million in reduced NO_X emissions. At a 3-percent discount rate, the net benefit amounts to $669.3 million per year.

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[72] DOE used a two-step calculation process to convert the time-series of costs and benefits into annualized values. First, DOE calculated a present value in 2011, the year used for discounting the NPV of total consumer costs and savings, for the time-series of costs and benefits using discount rates of three and seven percent for all costs and benefits except for the value of CO_2 reductions. For the latter, DOE used a range of discount rates, as shown in Table I.3. From the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in 2013 that yields the same present value. The fixed annual payment is the annualized value. Although DOE calculated annualized values, this does not imply that the time-series of cost and benefits from which the annualized values were determined would be a steady stream of payments.

Table V-105 Annualized Benefits and Costs of Proposed Standards for Battery Chargers

	Discount Rate	Primary Estimate*	Low Net Benefits Estimate*	High Net Benefits Estimate*
		Monetized (million 2010$/year)		
Benefits				
Operating Cost Savings	7%	447.2	425.6	468.8
	3%	485.2	459.7	511.2
CO_2 Reduction at $4.9/t**	5%	19.3	19.3	19.3
CO_2 Reduction at $22.3/t**	3%	71.6	71.6	71.6
CO_2 Reduction at $36.5/t**	2.5%	111.5	111.5	111.5
CO_2 Reduction at $67.6/t**	3%	218.5	218.5	218.5
NO_X Reduction at $2,537/t**	7%	4.3	4.3	4.3
	3%	4.5	4.5	4.5
Total†	7% plus CO_2 range	470.7 to 670.0	449.1 to 648.4	492.4 to 691.6
	7%	523.1	501.5	544.7
	3%	561.3	535.8	587.4
	3% plus CO_2 range	509.0 to 708.2	483.5 to 682.7	535.0 to 734.3
Costs				
Incremental Product Costs	7%	(110.0)	(110.0)	(110.0)
	3%	(107.9)	(107.9)	(107.9)
Total Net Benefits				
Total †	7% plus CO_2 range	580.7 to 780.0	559.1 to 758.3	602.3 to 801.6
	7%	633.0	611.4	654.7
	3%	669.3	643.8	695.3
	3% plus CO_2 range	616.9 to 816.2	591.4 to 790.7	643.0 to 842.2

* The results include benefits to consumers which accrue after 2042 from the products purchased from 2013 through 2042. Costs incurred by manufacturers, some of which may be incurred prior to 2013 in preparation for the rule, are indirectly included as part of incremental equipment costs. The Primary, Low Benefits, and High Benefits Estimates utilize forecasts of energy prices from the AEO2010 Reference case, Low Estimate, and High Estimate, respectively.

** The CO_2 values represent global monetized values (in 2010$) of the social cost of CO_2 emissions in 2010 under several scenarios. The values of $4.9, $22.3, and $36.5 per ton are the averages of SCC distributions calculated using 5-percent, 3-percent, and 2.5-percent discount rates, respectively. The value of $67.6 per ton represents the 95th percentile of the SCC distribution calculated using a 3-percent discount rate. The value for NO_X (in 2010$) is the average of the low and high values used in DOE's analysis.

† Total Benefits for both the 3-percent and 7-percent cases are derived using the SCC value calculated at a 3-percent discount rate, which is $22.3/ton in 2010 (in 2010$). In the rows labeled as "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

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VI. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866 and 13563

Section 1(b)(1) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems that today's standards address are as follows:

(1) There is a lack of consumer information and/or information processing capability about energy efficiency opportunities in the home appliance market.

(2) There is asymmetric information (one party to a transaction has more and better information than the other) and/or high transactions costs (costs of gathering information and effecting exchanges of goods and services) in the home appliance market.

(3) There are external benefits resulting from improved energy efficiency of battery chargers and EPSs that are not captured by the users of such equipment. These benefits include externalities related to environmental protection and energy security that are not reflected in energy prices, such as reduced emissions of greenhouse gases.

In addition, DOE has determined that today's regulatory action is an ''economically significant regulatory action'' under section 3(f)(1) of Executive Order 12866. Accordingly, section 6(a)(3) of the Executive Order requires that DOE prepare a regulatory impact analysis (RIA) on today's rule and that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) review this rule. In the RIA, DOE identified and analyzed six alternatives to standards, including consumer rebates, consumer tax credits, manufacturer tax credits, voluntary energy efficiency targets, an early replacement program, and a bulk government purchasing program. DOE quantified the NES and NPV for these alternatives and did not find any alternatives to be more beneficial than standards for any BC or EPS product class.

DOE presented to OIRA for review the draft rule and other documents prepared for this rulemaking, including the RIA,[73] and has included these documents in the rulemaking record. The assessments prepared pursuant to Executive Order 12866 can be found in the technical support document for this rulemaking. They are available for public review in the Resource Room of DOE's Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281 (Jan. 21, 2011)). EO 13563 is supplemental to, and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in, Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

We emphasize as well that Executive Order 13563 requires agencies ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.'' For the reasons stated in the preamble, DOE believes that today's notice of proposed rulemaking is consistent with these principles, including that, to the extent permitted by law, agencies adopt a regulation only upon a reasoned determination that its benefits justify its costs and select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits.

B. Review Under the Regulatory Flexibility Act

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

As a result of this review, DOE has prepared an IRFA addressing the impacts on small manufacturers with respect to the battery charger portion of this proposal. DOE will transmit a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for review under 5 U.S.C. 605(b). As presented and discussed below, the IFRA describes potential impacts on small business manufacturers of battery chargers associated with the required capital and product conversion costs at each TSL and discusses alternatives that could minimize these impacts. Because DOE did not find any small business EPS manufacturers, DOE did not prepare an IRFA regarding the impacts on EPS manufacturers from this proposal.

A statement of the reasons for the proposed rule, and the objectives of, and legal basis for, the proposed rule, are set forth elsewhere in the preamble and not repeated here.

1. Description and Estimated Number of Small Entities Regulated

a. Methodology for Estimating the Number of Small Entities

For manufacturers of EPSs and battery chargers, the SBA has set a size

[73] The Regulatory Impact Analysis is also available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/battery_external_preliminaryanalysis_tsd.html#tsd.*

threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30850 (May 15, 2000), as amended at 65 FR 53533, 53545 (Sept. 5, 2000) and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf*. EPS and battery charger manufacturing is classified under NAICS 335999, ''All Other Miscellaneous Electrical Equipment and Component Manufacturing.'' The SBA sets a threshold of 500 employees or less for an entity to be considered as a small business for this category.

To estimate the number of companies that could be small business manufacturers of products covered by this rulemaking, DOE conducted a market survey using all available public information to identify potential small manufacturers. DOE's research involved industry trade association membership directories, product databases, individual company Web sites, and the SBA's Small Business Database to create a list of every company that could potentially manufacture products covered by this rulemaking. DOE also asked stakeholders and industry representatives if they were aware of any other small manufacturers during manufacturer interviews and at previous DOE public meetings. DOE contacted companies on its list, as necessary, to determine whether they met the SBA's definition of a small business manufacturer of covered EPSs and battery chargers. DOE screened out companies that did not offer products covered by this rulemaking, did not meet the definition of a ''small business,'' or are foreign-owned and operated.

Based on this screening, DOE identified 30 companies that could potentially manufacture EPSs or battery chargers. DOE eliminated most of these companies from consideration as small business manufacturers based on a review of product literature and Web sites. When those steps yielded inconclusive information, DOE contacted the companies directly. As part of these efforts, DOE identified Lester Electrical, Inc. (Lincoln, Nebraska), a manufacturer of golf car battery chargers, as the only small business that appears to produce covered battery chargers domestically.

DOE did not identify any small business manufacturers of EPSs. DOE also did not identify any domestic manufacturers of EPSs, which indicates that all residential EPSs sold in the United States are imported. Because there are no small business manufacturers of EPSs, DOE certifies that the standards for EPSs set forth in the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for the EPS portion of this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

DOE requests comment on the above analysis, as well as any information concerning small businesses that could be impacted by this rulemaking and the nature and extent of those potential impacts of the proposed energy conservation standards on small EPS manufacturers. (See Issue 30 under ''Issues on Which DOE Seeks Comment'' in section VII.E of this NOPR.)

The following sections address the IFRA for small business manufacturers of battery chargers.

b. Manufacturer Participation

Before issuing this NOPR, DOE contacted the potential small business manufacturers of battery chargers it had identified. One small business consented to being interviewed during the MIA interviews. DOE also obtained information about small business impacts while interviewing large manufacturers.

c. Battery Charger Industry Structure

With respect to battery chargers, industry structure is typically defined by the characteristics of the industry of the application(s) for which the battery chargers are produced. In the case of the small business DOE identified, however, the battery charger itself is the product the small business produces. That is, the company does not also produce the applications with which the battery charger is intended to be used. Specifically, the company manufactures battery chargers predominantly intended for golf cars (product class 7) and wheelchairs (product classes 5 and 6).

A high level of concentration exists in both battery charger markets. Two players account for the vast majority of the golf car battery charger market and each has a similar share. Both competitors in the golf car battery charger market are small businesses: One is foreign-owned and operated, while the other is a domestic small business. Despite this concentration, there is considerable competition for three main reasons. First, each manufacturer sells into a market that is almost as equally concentrated: Three golf car manufacturers supply the majority of the golf cars sold domestically. Second, while there are currently only two major suppliers of battery chargers to the domestic market, the constant prospect of potential entry from other foreign countries has ceded substantial buying power to the three golf car OEMs. Third, golf car manufacturers have the ever-present option of not building electric golf cars altogether (and thus the need for the battery charger) by opting to build gas-powered products. DOE examines a price elasticity sensitivity scenario for this in chapter 12 of the TSD to assess this possibility. Currently, roughly three-quarters of the golf car market is electric, with the remainder gas-powered.

The majority of industry shipments flow to the ''fleet'' segment—i.e. battery chargers sold to golf car manufacturers who then lease the cars to golf courses. Most cars are leased for the first few years before being sold to smaller golf courses or other individuals for personal use. A smaller portion of golf cars are sold as new through dealer distribution.

Further upstream, approximately half of the battery chargers intended for golf car use is manufactured domestically, while the other half is foreign-sourced. These latter-sourced battery chargers are typically high frequency designs, while line frequency designs, which are usually less efficient, are made domestically. During the design cycle of the golf car, the battery charger supplier and OEM typically work closely together when designing the battery charger.

The small business manufacturer is also a relatively smaller player in the markets for wheelchair and industrial lift battery chargers. Most wheelchair battery chargers and the wheelchairs themselves are manufactured overseas. Three wheelchair manufacturers supply the majority of the U.S. market, but do not have domestic manufacturing.

d. Comparison Between Large and Small Entities

As discussed above, there are two major suppliers in the golf car battery charger market. Both are small businesses, although one is foreign-owned and operated. DOE did not identify any large businesses with which to compare the projected impacts on small businesses.

2. Description and Estimate of Compliance Requirements

The U.S.-owned small business DOE identified manufactures battery chargers for golf cars (product class 7) and wheelchairs (product classes 5 and 6), as well as industrial lifts (which are not covered by this rulemaking). DOE anticipates the proposed rule will require both capital and product conversion costs to achieve compliance. Various combinations of selected TSLs for product classes 5 and 6 (which are combined under a single TSL) and product class 7 will drive different levels of small business impacts. The compliance costs associated with this combination of potential TSLs are present in tables Table VI–1. Compared to the product development (R&D) efforts required to achieve the proposed levels, DOE does not expect the various potential combinations of TSLs to require significant capital expenditures. Although some replacement of fixtures, new assembly equipment and tooling would be required, the magnitude of these expenditures would be unlikely to cause significant adverse financial impacts. Product class 7 drives the majority of these costs. See Table VI.1 below for the estimated capital conversion costs for a typical small business.

Table VI–1The product conversion costs associated with standards are more significant for the small business manufacturer at issue than the projected capital costs. As discussed in section V.B.2.a.ii of this notice, TSL 1 for product class 7 reflects a technology change from a linear battery charger at the baseline to a switch-mode or high-frequency design. This change would require manufacturers that produce linear battery chargers to invest heavily in the development of a new product design, which would require investments in engineering resources for R&D, testing, and certification, and marketing and training changes. Again, the level of expenditure at each TSL is driven almost entirely by the changes required for product class 7 at each TSL. See the table below for estimated product conversion costs for a typical small business.

Table VI–2, and Table VI–3 below, accompanied by a description of these and other impacts.

a. Capital Conversion Costs

Compared to the product development (R&D) efforts required to achieve the proposed levels, DOE does not expect the various potential combinations of TSLs to require significant capital expenditures. Although some replacement of fixtures, new assembly equipment and tooling would be required, the magnitude of these expenditures would be unlikely to cause significant adverse financial impacts. Product class 7 drives the majority of these costs. See Table VI.1 below for the estimated capital conversion costs for a typical small business.

Table VI-1 Estimated Capital Conservation Costs for a Typical Small Business (2010$ million)

Alternatives	1	2*	3	4**
If the TSL for PC 5 & 6 is…	TSL 1	TSL 2	TSL 2	TSL 3
And the TSL for PC 7 is…	TSL 1	TSL 1	TSL 2	TSL 2
Estimated Capital Conversion Costs	$0.1	$0.1	$0.1	$0.1

*This alternative reflects the combination of TSLs proposed in today's rulemaking.
**Reflects max-tech.

b. Product Conversion Costs

The product conversion costs associated with standards are more significant for the small business manufacturer at issue than the projected capital costs. As discussed in section V.B.2.a.ii of this notice, TSL 1 for product class 7 reflects a technology change from a linear battery charger at the baseline to a switch-mode or high-frequency design. This change would require manufacturers that produce linear battery chargers to invest heavily in the development of a new product design, which would require investments in engineering resources for R&D, testing, and certification, and marketing and training changes. Again, the level of expenditure at each TSL is driven almost entirely by the changes required for product class 7 at each TSL. See the table below for estimated product conversion costs for a typical small business.

Table VI-2 Estimated Product Conversion Costs for a Typical Small Business (2010$ million)

Alternatives	1	2*	3	4**
If the TSL for PC 5 & 6 is…	TSL 1	TSL 2	TSL 2	TSL 3
And the TSL for PC 7 is…	TSL 1	TSL 1	TSL 2	TSL 2
Estimated Product Conversion Costs	$2.5	$2.7	$4.8	$5.1

*This alternative reflects the combination of TSLs proposed in today's rulemaking.
**Reflects max-tech.

c. Summary of Compliance Impacts

Table VI-3 Estimated Total Conversion Costs for a Typical Small Business (2010$ million)

Alternatives	1	2*	3	4**
If the TSL for PC 5 & 6 is…	TSL 1	TSL 2	TSL 2	TSL 3
And the TSL for PC 7 is…	TSL 1	TSL 1	TSL 2	TSL 2
Estimated Total Conversion Costs	$2.6	$2.8	$4.9	$5.2

*This alternative reflects the combination of TSLs proposed in today's rulemaking.
**Reflects max-tech.

Based on its engineering analysis, manufacturer interviews and public comments, DOE believes TSL 1 for product class 7 would establish an efficiency level that standard linear battery chargers could not cost-effectively achieve. Not only would the size and weight of such chargers potentially conflict with end-user preferences, but the additional steel and copper needs would make such chargers cost-prohibitive in the marketplace. Baseline linear designs are already significantly more costly to manufacture than the more-efficient switch-mode designs, as DOE's cost efficiency curve shows (see Table IV–22). Because, in this case, the small business manufacturer is positioned as a vertically integrated supplier of linear battery chargers, any energy conservation standard that effectively required switch-mode technology would likely cause significant adverse impacts on that manufacturer. All products currently manufactured in-house by this manufacturer would likely require complete redesigns.

The potential impacts of a standard on the small business manufacturer are not entirely captured by the conversion costs estimates, however. While standard linear battery chargers typically have much higher associated material costs relative to the switch-mode battery chargers, the manufacturing process of switch-mode designs is more labor intensive. Therefore, in high-wage countries like the United States, a manufacturer is at a relative cost-disadvantage in producing switch-mode battery chargers. It is most likely for this reason that DOE was unable to identify any domestic manufacturing of switch-mode battery chargers.

At the proposed efficiency levels, the small business manufacturer will face a difficult decision on whether to attempt to manufacture switch-mode battery chargers in-house and likely compete on factors other than price, move production to lower-wage regions, or source their battery charger manufacturing to a foreign company and rebrand these battery chargers. Given the lack of domestic switch-mode battery charger manufacturers, one of the latter two strategies would appear the more likely course.

3. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being considered today.

4. Significant Alternatives to the Proposed Rule

The discussion above analyzes impacts on small businesses that would result from the other TSLs DOE considered. Though TSLs lower than the proposed TSLs are expected to reduce the impacts on small entities, DOE is required by EPCA to establish standards that achieve the maximum improvement in energy efficiency that are technically feasible and economically justified, and result in a significant conservation of energy. Once DOE determines that a particular TSL meets those requirements, DOE adopts that TSL in satisfaction of its obligations under EPCA.

In addition to the other TSLs being considered, the NOPR TSD includes a regulatory impact analysis in chapter 17. For battery chargers, this report discusses the following policy alternatives: (1) No standard, (2) consumer rebates, (3) consumer tax credits, (4) manufacturer tax credits, and (5) early replacement. DOE does not intend to consider these alternatives further because they are either not feasible to implement, or not expected to result in energy savings as large as those that would be achieved by the standard levels under consideration.

DOE continues to seek input from businesses that would be affected by this rulemaking and will consider comments received in the development of any final rule.

C. Review Under the Paperwork Reduction Act

Manufacturers of battery chargers and EPSs must certify to DOE that their product complies with any applicable energy conservation standard. In certifying compliance, manufacturers must test their products according to the DOE test procedure for battery chargers and EPSs, including any amendments adopted for that test procedure. DOE has proposed regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including EPSs 75 FR 56796 (Sept. 16, 2010). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval and only applies to Class A EPSs. As discussed, new reporting requirements for battery chargers and non-Class A EPSs will be proposed and a collection-of-information requirement for the certification and recordkeeping subject to review and approval by OMB under the PRA will be submitted as part of a future certification, compliance, and enforcement rule promulgated by DOE. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this 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 burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Victor Petrolati (see **ADDRESSES**) and by email to *Chad_S_Whiteman@omb.eop.gov.*

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless

that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has determined that the proposed rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the requirements for application of a CX. *See* 10 CFR part 1021, App. B, B5.1(b); 1021.410(b) and Appendix B, B(1)–(5). The proposed rule fits within the category of actions because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this proposed rule. DOE's CX determination for this proposed rule is available at *http://cxnepa.energy.gov/.*

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

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

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://www.gc.doe.gov.*

Although today's proposed rule does not contain a Federal intergovernmental mandate, it may impose expenditures of $100 million or more on the private sector. Specifically, the proposed rule will likely result in a final rule that could impose expenditures of $100 million or more. Such expenditures may include (1) investment in research and development and in capital expenditures by battery charger and EPS manufacturers in the years between the final rule and the compliance date for the new standard, and (2) incremental additional expenditures by consumers to purchase higher-efficiency battery chargers and EPSs, starting in 2013.

Section 202 of UMRA authorizes an agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. 2 U.S.C. 1532(c). The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of this NOPR and the ''Regulatory Impact Analysis'' section of the TSD for this proposed rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. 2 U.S.C. 1535(a). DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless DOE publishes an explanation for doing otherwise or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6295(u), today's proposed rule would establish energy conservation standards for battery chargers and EPSs that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the ''Regulatory Impact Analysis'' section of the TSD for today's proposed rule.

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

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

I. Review Under Executive Order 12630

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

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

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

K. Review Under Executive Order 13211

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

DOE has tentatively concluded that today's proposed regulatory action, which sets forth proposed energy conservation standards for battery chargers and EPSs, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on the proposed rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report'' dated February 2007 has been disseminated and is available at the following Web site: *http://www1.eere.energy.gov/buildings/appliance_standards/peer_review.html.*

VII. Public Participation

A. Attendance at Public Meeting

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

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

B. Procedure for Submitting Prepared General Statements for Distribution

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

C. Conduct of Public Meeting

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

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

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

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

D. Submission of Comments

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

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

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

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

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

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

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

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

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

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

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

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

E. Issues on Which DOE Seeks Comment

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

1. DOE requests interested party feedback, including any substantive data, regarding today's proposed standard levels and the potential for lessening of utility or performance related features.

2. DOE requests interested party feedback on whether the standards proposed in today's rule would necessitate the use of any proprietary designs or patented technologies.

3. DOE seeks comment on its analysis of the costs and benefits of the standards proposed in this rulemaking, including but not limited to DOE's analytic assumptions as highlighted in the list of issues herein. More specifically, DOE seeks comment on the Agency's estimate that the proposed standard for battery chargers lead to between $92.8 million and $98.3 million in cost savings (i.e. negative costs) relative to the assumed baseline. Recognizing that the cost models used for this analysis have certain limitations, DOE seeks comment on the assumed market failure the agency has identified as the underlying reason that private markets have not taken advantage of these cost savings in the absence of this proposed rulemaking. DOE also seeks comment on key assumptions that contributed to this estimate, including but not limited to assumptions regarding energy consumption, shipments, and manufacturer costs, treatment of existing regulatory requirements for battery chargers and EPSs, and treatment of Energy Star and other emerging technologies in both the baseline and standards cases. Finally, DOE seeks comment on the assumption that incremental product costs for battery chargers are negative because of a shift in technology from linear power supplies to switch mode power for the larger battery chargers in product classes 5, 6, and 7.

4. DOE seeks comment on its estimates of battery charger and EPS shipments, lifetimes, and efficiency distributions for each application and product class. DOE is especially interested in receiving comment on its assumption that EPSs for mobile phones and smartphones are likely to standardize around a common connection standard and, as a result, remain in use beyond the lifetimes of their associated applications (an average lifetime of 4 years as opposed to an average lifetime of 2 years).

5. DOE seeks comment and related data on which battery charger and EPS applications are used in the commercial sector, what fraction of shipments are to the commercial sector, and how product lifetimes and usage may differ between residential and commercial settings.

6. DOE seeks comment on its proposed approach in classifying EPSs that indirectly operate consumer products and whether that approach requires modifications. If changes are required, DOE seeks specific suggestions on how the proposed approach should be altered.

7. DOE welcomes comment on whether there are any performance-related features characteristic of either Class A or non-Class A devices (but not both) in product class N that would justify different standard levels for the two groups. DOE also seeks comment on the merits of applying a standard to EPSs falling into product class N. DOE also welcomes comment on the proposed compliance dates for non-Class A EPSs.

8. DOE seeks comment, information, and/or data on whether the proposed standards would impact any features in the regulated products or in their associated complimentary applications. If so, DOE seeks comment as to whether these impacts would impact the utility of either the product or the application, and on whether, how, and to what degree consumer welfare might be impacted by the proposed standards.

9. DOE requests any information regarding existing products that may seem to be able to be classified in multiple product classes.

10. DOE seeks comment on possible issues of electromagnetic interference and/or radio frequency interference associated with switch-mode power supplies (SMPS) used with amateur radios, including design options for reducing or eliminating interference.

11. DOE would like to request any feedback on the proposed approach to determining the average efficiency for multiple-voltage EPSs.

12. DOE seeks comment on its methodology for generating CSL3 and CSL4 for high-power EPSs.

13. DOE seeks comment on its proposal to set a standard for multiple-voltage EPSs as a continuous function of output power.

14. DOE seeks comment on its proposed approach in calculating unit energy consumption for battery chargers and the appropriateness of the various equations to calculate this consumption that are presented in today's proposal.

15. DOE seeks information, including any substantive data, to help it assess factors of durability, reliability, and preference of transformer based battery chargers versus those incorporating switch-mode power supplies.

16. DOE seeks comment on its proposed approach in developing a cost-efficiency relationship for battery charger product class 6.

17. DOE requests comment on the results of its LCC and PBP analyses, particularly with respect to the projected results for multiple voltage EPSs (i.e., product class X). In addition, DOE requests comment regarding the Agency's approach of calculating LCC by averaging estimated installation costs within subproduct categories. Further, DOE requests comment on the household debt equity discount rate applied specifically to the LCC cost analysis. Finally, DOE requests comment regarding the segregation of the LCC analysis and consumer price impacts, which are separately addressed in a shipment-based analysis.

18. DOE seeks comment on its treatment of the market path, markups, and MSP estimates.

19. DOE seeks comment on its use of a roll-up market response, which projects that only those products which fall below a standard will improve in efficiency, and that the same products will only improve in efficiency so as to meet, but not exceed, the efficiency required by the standard. DOE further seeks comments on the assumptions regarding efficiency distributions in the baseline, such as the extent to which the worst and best energy performers are and are not represented in the baseline.

20. DOE seeks comment on whether, and to what extent, battery charger efficiency would be likely to improve in the absence of standards, including the assumption that battery charger efficiency will not improve between today and the compliance date in 2013.

21. DOE seeks comment on its assumptions about the extent to which, if at all, EPS efficiency will improve for product classes B, C, D, E, X and H in the absence of mandatory standards, both prior to and after 2013.

22. DOE recognizes that significant variation in use exists for battery chargers, EPSs, and the applications they power. In an effort to ensure the accuracy of its assumed usage profiles, DOE seeks substantiated estimates, with supporting data, of usage profiles for battery chargers, EPSs, and the applications they power.

23. DOE seeks comment on its EPS loading points, as well as test results that will allow it to improve the accuracy of those loading points.

24. DOE seeks comment on its estimate that shipments of EPSs and battery chargers are inelastic and on other elasticity assumptions DOE has made. DOE further seeks comment, information, and data regarding DOE's market assessment of EPSs and battery chargers via complimentary applications with which these products are nearly always bundled.

25. DOE seeks comment on its estimate that substitution impacts for EPSs and battery chargers are negligible.

26. DOE seeks comment on the methodology employed for conducting the National Impact Analysis, including the calculations of National Inventory, National Energy Savings, and Net Present Value.

27. DOE seeks comment on its estimates regarding the proportions of certain applications—including mobile phones, MP3 players, GPS equipment, and personal care products—that ship with EPSs designed to directly operate the application versus indirectly operate the application.

28. DOE seeks comment on what level of efficiency EPSs in product class N already meet and whether EPSs sold in California are different in terms of their energy efficiency than EPSs sold in other States.

29. DOE seeks comment on the accuracy of its distribution models for battery chargers and EPSs, as well as its estimates off battery charger and EPS markups. To the extent that these models and estimates can be improved, DOE seeks specific suggestions and supporting data.

30. DOE seeks information concerning small businesses that could be impacted by this rulemaking and the nature and extent of those potential impacts. For example, DOE is interested in information concerning impacts on the golf cart industry that have not been captured in the current rulemaking analysis. Further, DOE seeks further information and data regarding the 'double jeopardy' EPS and battery charger impacts on small businesses as raised by commenters.

31. DOE seeks comment on whether the proposed standards would lead to lessening of market competition in the regulated industries.

32. DOE seeks comment on whether there are any products on the market that are not already subject to California or Federal energy efficiency standards that would be covered by the new EPS standards being proposed for product class N today. DOE welcomes specific examples of such products, if they exist.

33. DOE invites comment on solid-state lighting EPSs, specifically on whether there are any differences between SSL EPSs and other EPSs that might warrant treating them as a separate product class, the size of the market for these products, what proportion of SSL luminaires use EPSs, the efficiency of those EPSs, and usage patterns.

34. DOE seeks comment on whether any battery chargers exist that can only be operated on 12V input, whether a device that can be powered only from a 12V power outlet can be assumed to be designed solely for use in recreational vehicles (RVs) and other mobile equipment, and whether there are battery chargers with DC inputs other than 5V and 12V.

35. DOE welcomes comment on any and all issues related to efficiency markings for battery chargers and EPSs.

36. DOE is interested in receiving comments from industry, states, and other interested parties on the best ways to ensure a smooth transition from the battery charger standards established in California to the national standards addressed in this proposed rule.

VIII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's proposed rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Reporting and recordkeeping requirements, Small businesses.

Issued in Washington, DC, on March 8, 2012.

Henry Kelly,

Acting Assistant Secretary of Energy, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Section 430.2 is amended by adding definitions for *AC–AC external power supply, AC–DC external power supply, basic-voltage external power supply, direct operation external power supply, indirect operation external power supply, low-voltage external power supply,* and *multiple-voltage external power supply* in alphabetical order to read as follows:

§ 430.2 Definitions.

* * * * *

AC–AC external power supply means an external power supply that is used to convert household electric current into a single lower-voltage AC current.

AC–DC external power supply means an external power supply that is used to convert household electric current into a single lower-voltage DC current.

* * * * *

Basic-voltage external power supply means an external power supply that is not a low-voltage power supply.

* * * * *

Direct operation external power supply means an external power supply that can operate a consumer product that is not a battery charger without the assistance of a battery.

* * * * *

Indirect operation external power supply means an external power supply that cannot operate a consumer product that is not a battery charger without the assistance of a battery as determined by the following steps:

(1) If a product can be connected to an end-use consumer product and that consumer product can be operated using battery power, the method for determining if an EPS can directly power an application is as follows:

(i) Charge the battery in the application via the EPS such that the application can operate as intended before taking any additional steps.

(ii) Disconnect the EPS from the application. From an off mode state, turn on the application and record the time necessary for it to become operational to the nearest five second increment (5 sec, 10 sec, etc.).

(iii) Operate the application using power only from the battery until the application stops functioning due to the battery discharging.

(iv) Connect the EPS first to mains and then to the application. Immediately attempt to operate the application. Record the time for the application to become operational to the nearest five second increment (5 sec, 10 sec, etc.).

(2) If the time recorded in paragraph (1)(iv) of this definition is less than or equal to the summation of the time recorded in paragraph (1)(ii) of this definition and five seconds, the EPS can operate the application directly and is not in product class N. Otherwise, it is an indirect operation EPS and is subject to the standards of product class N in § 430.32(w).

* * * * *

Low-voltage external power supply means an external power supply with a nameplate output voltage less than 6 volts and nameplate output current greater than or equal to 550 milliamps.

* * * * *

Multiple-voltage external power supply means an external power supply that is used to convert household

electric current into multiple simultaneous output currents.

* * * * *

3. Section 430.32 is amended by revising the paragraph (w) heading and adding paragraphs (w)(1)(iv), (w)(2), (w)(3), (w)(4), (w)(5) and (y) to read as follows:

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

* * * * *

(w) *External Power Supplies.*

(1) * * *

(iv) Except as provided in this paragraph (w)(1)(iii) of this section, all direct operation external power supplies manufactured on or after July 1, 2013, shall meet the following standards:

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AC-DC, Basic-Voltage External Power Supply		
Nameplate Output Power (P_{out})	**Minimum Average Efficiency in Active Mode** *(expressed as a decimal)*	**Maximum Power in No-Load Mode [W]**
0 to ≤ 1 watt	≥ 0.5 * P_{out} + 0.16	≤ 0.100
> 1 to ≤ 49 watts	≥ 0.071 * ln(P_{out}) - 0.0014 * P_{out} +0.67	≤ 0.100
> 49 watts to ≤ 250 watts	≥ 0.880	≤ 0.210
> 250 watts	≥ 0.875	≤ 0.500

AC-DC, Low-Voltage External Power Supply		
Nameplate Output Power (P_{out})	**Minimum Average Efficiency in Active Mode** *(expressed as a decimal)*	**Maximum Power in No-Load Mode [W]**
0 to ≤ 1 watt	≥ 0.517 * P_{out} + 0.087	≤ 0.100
> 1 to ≤ 49 watts	≥ 0.0834 * ln(P_{out}) - 0.0014 * P_{out} + 0.609	≤ 0.100
> 49 watts to ≤ 250 watts	≥ 0.870	≤ 0.210
> 250 watts	≥ 0.875	≤ 0.500

AC-AC, Basic-Voltage External Power Supply		
Nameplate Output Power (P_{out})	**Minimum Average Efficiency in Active Mode** *(expressed as a decimal)*	**Maximum Power in No-Load Mode**
0 to ≤ 1 watt	≥ 0.5 * P_{out} + 0.16	≤ 0.210
> 1 to ≤ 49 watts	≥ 0.071 * ln(P_{out}) - 0.0014 * P_{out} +0.67	≤ 0.210
> 49 watts to ≤ 250 watts	≥ 0.880	≤ 0.210
> 250 watts	≥ 0.875	≤ 0.500

AC-AC, Low-Voltage External Power Supply		
Nameplate Output Power (P_{out})	**Minimum Average Efficiency in Active Mode** *(expressed as a decimal)*	**Maximum Power in No-Load Mode**
0 to ≤ 1 watt	≥ 0.517 * P_{out} + 0.087	≤ 0.210

> 1 to ≤ 49 watts	≥ 0.0834 * ln(P_{out}) - 0.0014 * P_{out} + 0.609	≤ 0.210
> 49 watts to ≤ 250 watts	≥ 0.870	≤ 0.210
> 250 watts	≥ 0.875	≤ 0.500
Multiple-Voltage External Power Supply		
Nameplate Output Power (P_{out})	**Minimum Average Efficiency in Active Mode** *(expressed as a decimal)*	**Maximum Power in No-Load Mode [W]**
0 to ≤ 1 watt	≥ 0.497 * P_{out} + 0.067	≤ 0.300
> 1 to ≤ 49 watts	≥ 0.075 * ln (P_{out}) + 0.561	≤ 0.300
> 49 watts	≥ 0.860	≤ 0.300

(2) The standards described in paragraphs (w)(1)(i) and (iv) of this section shall not constitute an energy conservation standard for the separate end-use product to which the external power supply is connected.

(3) Any external power supply subject to the standards in paragraphs (w)(1)(i) and (iv) of this section shall be clearly and permanently marked in accordance with the External Power Supply International Efficiency Marking Protocol, as referenced in the ''Energy Star Program Requirements for Single Voltage External Ac–Dc and Ac–Ac Power Supplies,'' (incorporated by reference; see § 430.3), published by the Environmental Protection Agency.

(4) Any indirect operation external power supply subject to the standards in paragraph (w)(1)(i) of this section and not labeled with a Roman numeral VI in accordance with the marking protocol referred to in paragraph (w)(3) of this section:

(i) Shall be permanently marked with the capital letter ''N'' as a superscript to the circle that contains the Roman numeral, for example,

and

(ii) If sold separately from the battery charger or end-use consumer product with which it is intended to be used, shall be marked with the manufacturer and model number of that battery charger or end-use consumer product.

(5) Any indirect operation external power supply not subject to the standards in paragraph (w)(1)(i) of this section and not labeled with a Roman numeral VI in accordance with the marking protocol referred to in paragraph (w)(3) of this section:

(i) Shall be permanently marked with the abbreviation ''EPS–N'', for example,

and

(ii) If sold separately from the battery charger or end-use consumer product with which it is intended to be used, shall be marked with the manufacturer and model number of that battery charger or end-use consumer product.

* * * * *

(y) *Battery Chargers.* (1) Battery chargers manufactured on or after July 1, 2013, shall have a unit energy consumption (UEC) less than or equal to the standard calculated using the equations for the appropriate product class and corresponding measured battery energy as shown below:

Product Class #	Input / Output Type	Battery Energy (Wh)	Special Characteristic or Battery Voltage	Maximum UEC (kWh/yr)
1	AC In, DC Out	< 100	Inductive Connection*	3.04
2			< 4 V	= 0.2095(E_{batt}**) + 5.87
3			4 – 10 V	For E_{batt} < 9.74 Wh, = 4.68 For E_{batt} ≥ 9.74 Wh, = 0.0933(E_{batt}) + 3.77
4			> 10 V	For E_{batt} < 9.71 Wh, = 9.03 For E_{batt} ≥ 9.71 Wh, = 0.2411(E_{batt}) + 6.69
5		100–3000	< 20 V	For E_{batt} < 355.18 Wh, = 20.06 For E_{batt} ≥ 355.18 Wh, = 0.0219(E_{batt}) + 12.28
6			≥ 20 V	For E_{batt} < 239.48 Wh = 30.37 For E_{batt} ≥ 239.48 Wh = 0.0495(E_{batt}) + 18.51
7		> 3000	-	= 0.502(E_{batt}) + 4.53
8	DC In, DC Out	-	< 9 V Input	0.66
9		-	≥ 9 V Input	No Standard
10a	AC In, AC Out	-	Basic (i.e. no Automatic Voltage Regulation)	For E_{batt} < 37.2 Wh, = 2.54 For E_{batt} ≥ 37.2 Wh, = 0.0733(E_{batt}) – 0.18
10b		-	Contains Automatic Voltage Regulation	For E_{batt} < 37.2 Wh, = 6.18 For E_{batt} ≥ 37.2 Wh, = 0.0733(E_{batt}) + 3.45
11	AC In, DC Out	< 100 Wh	Wireless Charging Capability (for dry environments)	Reserved

* Inductive connection and designed for use in a wet environment (e.g. electric toothbrushes)

**E_{batt} = Measured battery energy as determined in section 5.6 of Appendix Y to Subpart B of Part 430.

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(2) Unit energy consumption shall be calculated for a device seeking certification using one of the two equations listed below. If a device is tested and its charge test duration as determined in section 5.2 of Appendix Y to Subpart B of Part 430 minus 5 hours exceeds the threshold charge time listed in the table below, the equation in paragraph (y)(2)(ii) of this section shall be used to calculate UEC; otherwise a device's UEC shall be calculated using the equation in paragraph (y)(2)(i).

(i) $$UEC = 365\left(n(E24 - 5P_m - E_{batt})\frac{24}{t_{cd}} + (P_m(t_{a\&m} - (t_{cd} - 5)n)) + (P_{sb}t_{sb}) + (P_{off}t_{off})\right)$$

or,

(ii) $$UEC = 365\left(n(E_{24} - 5P_m - E_{batt})\frac{24}{(t_{cd} - 5)} + (P_{sb}t_{sb}) + (P_{off}t_{off})\right)$$

Where:

E_{24} = 24-hour energy as determined in section 5.10 of Appendix Y to Subpart B of Part 430,

E_{batt} = Measured battery energy as determined in section 5.6 of Appendix Y to Subpart B of Part 430,

P_m = Maintenance mode power as determined in section 5.9 of Appendix Y to Subpart B of Part 430,

P_{sb} = Standby mode power as determined in section 5.11 of Appendix Y to Subpart B of Part 430,

P_{off} = Off mode power as determined in section 5.12 of Appendix Y to Subpart B of Part 430,

t_{cd} = Charge test duration as determined in section 5.2 of Appendix Y to Subpart B of Part 430,

And

$t_{a\&m}$, n, t_{sb}, and t_{off}, are constants used depending upon a device's product class and found in the following table:

Product Class	Active + Maintenance ($t_{a\&m}$)	Standby (t_{sb})	Off (t_{off})	Charges (n)	Threshold Charge Time*
-	Hours per Day**			Number per Day	Hours
1	20.66	0.10	0.00	0.15	135.41
2	8.82	4.56	0.00	0.54	19.00
3	6.85	0.29	0.00	0.10	67.21
4	16.35	0.95	0.00	0.49	33.04
5	6.29	1.07	0.00	0.11	56.83
6	17.17	6.83	0.00	0.34	50.89
7	8.14	7.30	0.00	0.32	25.15
8	6.34	6.93	0.00	0.54	19.00
10	24.00	0.00	0.00	0.00	N/A***

*If the duration of the charge test (minus 5 hours) as determined in section 5.2 of Appendix Y to Subpart B of Part 430 exceeds the threshold charge time, use equation (ii) to calculate UEC otherwise use equation (ii).

**If the total time does not sum to 24 hour per day, the remaining time is allocated to unplugged time, which means there is 0 power consumption and no changes to the UEC calculation is needed.

***Because n = 0 for PC 10, UEC should always be calculated using equation (i).

(3) Any battery charger subject to the standards in paragraph (y)(1) of this section shall be clearly and permanently marked on the outside of its housing with the encircled upper case letters ''BC'' coupled with the Roman numeral ''III'' or a Roman numeral having a greater value, for example,

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Part IV

Department of Commerce

Bureau of the Census

Qualifying Urban Areas for the 2010 Census; Notice

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 120308168–2158–01]

Qualifying Urban Areas for the 2010 Census

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice.

SUMMARY: The Bureau of the Census (Census Bureau) delineates urban areas after each decennial census for the purpose of tabulating and presenting data for the urban and rural population and housing within the United States, Puerto Rico, and the Island Areas.[1] The Census Bureau delineates urbanized areas[2] and urban clusters[3] primarily on the basis of residential population density measured at the census tract and census block levels of geography, but also based on additional criteria that account for patterns of non-residential development as outlined in the urban area criteria published in the **Federal Register** on August 24, 2011 (76 FR 53030).[4] This Notice provides the list of urbanized areas and urban clusters that qualified based on results of the 2010 Census of Population and Housing for the United States, Puerto Rico, and the Island Areas, and comprise the urban population, housing, and territory in these areas; ''rural'' encompasses any population, housing, and territory not included in any urban area. Publication of this Notice constitutes the Census Bureau's official announcement of the list of qualifying urbanized areas and urban clusters for reference by all interested parties.

DATES: *Effective Date:* This Notice is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Geographic Standards and Criteria Branch, Geography Division, U.S. Census Bureau, via email at *geo.gscb.list@census.gov* or telephone at 301–763–3056.

SUPPLEMENTARY INFORMATION: The Census Bureau identifies and tabulates data for the urban and rural populations and their associated areas solely for the presentation and comparison of statistical data. The Census Bureau does not take into account or attempt to anticipate any nonstatistical uses that may be made of these areas or their associated data, nor does it attempt to meet the requirements of such nonstatistical program uses. Nonetheless, the Census Bureau recognizes that some federal and state agencies are required by law to use Census Bureau-defined urban and rural classifications for allocating program funds, setting program standards, and implementing aspects of their programs. The agencies that make such nonstatistical uses of the areas and data should be aware that the changes to the urban and rural criteria for the 2010 Census might affect the implementation of their programs.

If a federal, state, local, tribal agency, or any organization voluntarily uses these urban and rural criteria in a nonstatistical program, it is that agency's responsibility to ensure that the criteria are appropriate for such use. In considering the appropriateness of such nonstatistical program uses, the Census Bureau urges each agency to consider permitting appropriate modifications of the results of implementing the urban and rural criteria specifically for the purposes of its program. When a program permits such modifications, the Census Bureau urges each agency to use descriptive terminology that clearly identifies the different criteria being applied to avoid confusion with the Census Bureau's official urban and rural classifications.

Executive Order 12866

This Notice has been determined to be not significant for purposes of Executive Order 12866.

Paperwork Reduction Act

This Notice does not represent a collection of information subject to the requirements of the Paperwork Reduction Act, Title 44, U.S.C., Chapter 35.

Urbanized Areas and Urban Clusters

This section of the Notice provides lists of the 2010 Census urbanized areas and urban clusters.

As a result of the 2010 Census, there are 486 urbanized areas in the United States, 11 urbanized areas in Puerto Rico, and no urbanized areas in the Island Areas, for a total of 497 urbanized areas. This total of 497 urbanized areas in 2010 includes 36 new urbanized areas since 2000 and the loss of four areas (three in the United States and one in the Commonwealth of the Northern Mariana Islands) that changed from urbanized areas in 2000 to urban clusters in 2010, for a net increase of 32 urbanized areas from the 465 defined from the Census 2000 results.

Of the 36 new urbanized areas in 2010, one was created when it no longer connected to a larger urbanized area of which it was a part in 2000, 12 were created from the connection of two or more urban clusters from 2000, and 23 were created from the growth of a single urban cluster from 2000.

As a result of the 2010 Census, a total of 3,104 urban clusters are in the United States, Puerto Rico, and the Island Areas.

A. List of Census 2010 Urbanized Areas in the United States, Puerto Rico, and the Island Areas

An alphabetical list of all qualifying urbanized areas follows. The population counts relate to data reported for the 2010 Census. New urbanized areas are indicated with an asterisk (*) next to the area's title.

Urbanized area	Population
Aberdeen—Bel Air South—Bel Air North, MD	213,751
Abilene, TX	110,421
Aguadilla—Isabela—San Sebastián, PR	306,196
Akron, OH	569,499
Albany, GA	95,779
Albany, OR*	56,997
Albany—Schenectady, NY	594,962
Albuquerque, NM	741,318
Alexandria, LA	82,804
Allentown, PA—NJ	664,651
Alton, IL—MO	83,890
Altoona, PA	79,930
Amarillo, TX	196,651
Ames, IA	60,438
Anchorage, AK	251,243
Anderson, IN	88,133
Anderson, SC	75,702
Ann Arbor, MI	306,022
Anniston—Oxford, AL	79,796
Antioch, CA	277,634
Appleton, WI	216,154
Arecibo, PR	139,171
Arroyo Grande—Grover Beach, CA*	52,000
Asheville, NC	280,648
Athens-Clarke County, GA	128,754
Atlanta, GA	4,515,419
Atlantic City, NJ	248,402
Auburn, AL	74,741
Augusta-Richmond County, GA—SC	386,787
Austin, TX	1,362,416
Avondale—Goodyear, AZ	197,041
Bakersfield, CA	523,994
Baltimore, MD	2,203,663
Bangor, ME	61,210
Barnstable Town, MA	246,695
Baton Rouge, LA	594,309
Battle Creek, MI	78,393
Bay City, MI	70,585
Beaumont, TX	147,922
Beckley, WV*	64,022

[1] The Island Areas are American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

[2] An urbanized area consists of densely settled territory that contains 50,000 or more people.

[3] An urban cluster consists of densely settled territory that contains at least 2,500 people, but fewer than 50,000 people.

[4] An urbanized area delineated as a result of a special census conducted by the Census Bureau during this decade (an intercensal urbanized area), at the request and expense of local governments, will be qualified using these criteria and the population counts reported in that special census.

Urbanized area	Population
Bellingham, WA	114,473
Beloit, WI—IL	63,835
Bend, OR	83,794
Benton Harbor—St. Joseph—Fair Plain, MI	61,022
Billings, MT	114,773
Binghamton, NY—PA	158,084
Birmingham, AL	749,495
Bismarck, ND	81,955
Blacksburg, VA	88,542
Bloomington, IN	108,657
Bloomington—Normal, IL	132,600
Bloomsburg—Berwick, PA*	53,618
Boise City, ID	349,684
Bonita Springs, FL	310,298
Boston, MA—NH—RI	4,181,019
Boulder, CO	114,591
Bowling Green, KY	78,306
Bremerton, WA	198,979
Bridgeport—Stamford, CT—NY	923,311
Bristol—Bristol, TN—VA	69,501
Brownsville, TX	217,585
Brunswick, GA	51,024
Buffalo, NY	935,906
Burlington, NC	119,911
Burlington, VT	108,740
Camarillo, CA	71,772
Canton, OH	279,245
Cape Coral, FL	530,290
Cape Girardeau, MO—IL*	52,900
Carbondale, IL*	67,821
Carson City, NV	58,079
Cartersville, GA*	52,477
Casa Grande, AZ*	51,331
Casper, WY	64,548
Cedar Rapids, IA	177,844
Chambersburg, PA*	50,887
Champaign, IL	145,361
Charleston, WV	153,199
Charleston—North Charleston, SC	548,404
Charlotte, NC—SC	1,249,442
Charlottesville, VA	92,359
Chattanooga, TN—GA	381,112
Cheyenne, WY	73,588
Chicago, IL—IN	8,608,208
Chico, CA	98,176
Cincinnati, OH—KY—IN	1,624,827
Clarksville, TN—KY	158,655
Cleveland, OH	1,780,673
Cleveland, TN	66,777
Coeur d'Alene, ID	98,378
College Station—Bryan, TX	171,345
Colorado Springs, CO	559,409
Columbia, MO	124,748
Columbia, SC	549,777
Columbus, GA—AL	253,602
Columbus, IN	54,933
Columbus, OH	1,368,035
Concord, CA	615,968
Concord, NC	214,881
Conroe—The Woodlands, TX	239,938
Conway, AR*	65,277
Corpus Christi, TX	320,069
Corvallis, OR	62,433
Cumberland, MD—WV—PA	51,899
Dallas—Fort Worth—Arlington, TX	5,121,892
Dalton, GA	85,239
Danbury, CT—NY	168,136
Danville, IL—IN	50,996
Daphne—Fairhope, AL*	57,383
Davenport, IA—IL	280,051
Davis, CA	72,794
Dayton, OH	724,091
Decatur, AL	70,436
Decatur, IL	93,863
DeKalb, IL	68,545
Delano, CA*	54,372
Deltona, FL	182,169
Denton—Lewisville, TX	366,174
Denver—Aurora, CO	2,374,203
Des Moines, IA	450,070
Detroit, MI	3,734,090
Dothan, AL	68,781
Dover, DE	110,769
Dover—Rochester, NH—ME	88,087
Dubuque, IA—IL	67,818
Duluth, MN—WI	120,378
Durham, NC	347,602
East Stroudsburg, PA—NJ*	54,316
Eau Claire, WI	102,852
El Centro—Calexico, CA	107,672
El Paso de Robles (Paso Robles)—Atascadero, CA	65,088
El Paso, TX—NM	803,086
Elizabethtown—Radcliff, KY	73,467
Elkhart, IN—MI	143,592
Elmira, NY	67,983
Erie, PA	196,611
Eugene, OR	247,421
Evansville, IN—KY	229,351
Fairbanks, AK	64,513
Fairfield, CA	133,683
Fajardo, PR	85,225
Fargo, ND—MN	176,676
Farmington, NM	53,049
Fayetteville, NC	310,282
Fayetteville—Springdale—Rogers, AR—MO	295,083
Flagstaff, AZ	71,957
Flint, MI	356,218
Florence, AL	77,074
Florence, SC	89,557
Florida—Imbéry—Barceloneta, PR	71,747
Fond du Lac, WI	54,901
Fort Collins, CO	264,465
Fort Smith, AR—OK	122,947
Fort Walton Beach—Navarre—Wright, FL	191,917
Fort Wayne, IN	313,492
Frederick, MD	141,576
Fredericksburg, VA	141,238
Fresno, CA	654,628
Gadsden, AL	64,172
Gainesville, FL	187,781
Gainesville, GA	130,846
Gastonia, NC—SC	169,495
Gilroy—Morgan Hill, CA	98,413
Glens Falls, NY	65,443
Goldsboro, NC	61,054
Grand Forks, ND—MN	61,270
Grand Island, NE*	50,440
Grand Junction, CO	128,124
Grand Rapids, MI	569,935
Grants Pass, OR*	50,520
Great Falls, MT	65,207
Greeley, CO	117,825
Green Bay, WI	206,520
Greensboro, NC	311,810
Greenville, NC	117,798
Greenville, SC	400,492
Guayama, PR	80,155
Gulfport, MS	208,948
Hagerstown, MD—WV—PA	182,696
Hammond, LA*	67,629
Hanford, CA	87,941
Hanover, PA*	66,301
Harlingen, TX	135,663
Harrisburg, PA	444,474
Harrisonburg, VA	66,784
Hartford, CT	924,859
Hattiesburg, MS	80,358
Hazleton, PA	56,827
Hemet, CA	163,379
Hickory, NC	212,195
High Point, NC	166,485
Hilton Head Island, SC*	68,998
Hinesville, GA	51,456
Holland, MI	99,941
Homosassa Springs—Beverly Hills—Citrus Springs, FL*	80,962
Hot Springs, AR	55,121
Houma, LA	144,875
Houston, TX	4,944,332
Huntington, WV—KY—OH	202,637
Huntsville, AL	286,692
Idaho Falls, ID	90,733
Indianapolis, IN	1,487,483
Indio—Cathedral City, CA	345,580
Iowa City, IA	106,621
Ithaca, NY	53,661
Jackson, MI	90,057
Jackson, MS	351,478
Jackson, TN	71,880
Jacksonville, FL	1,065,219
Jacksonville, NC	105,419
Janesville, WI	69,658
Jefferson City, MO	58,533
Johnson City, TN	120,415
Johnstown, PA	69,014
Jonesboro, AR	65,419
Joplin, MO	82,775
Juana Díaz, PR	80,928
Kahului, HI*	55,934
Kailua (Honolulu County)—Kaneohe, HI	113,682
Kalamazoo, MI	209,703
Kankakee, IL	81,926
Kansas City, MO—KS	1,519,417
Kennewick—Pasco, WA	210,975
Kenosha, WI—IL	124,064
Killeen, TX	217,630
Kingsport, TN—VA	106,571
Kingston, NY	57,442
Kissimmee, FL	314,071
Knoxville, TN	558,696
Kokomo, IN	62,182
La Crosse, WI—MN	100,868
Lady Lake—The Villages, FL	112,991
Lafayette, IN	147,725
Lafayette, LA	252,720
Lafayette—Louisville—Erie, CO	79,407
Lake Charles, LA	143,440
Lake Havasu City, AZ*	53,427
Lake Jackson—Angleton, TX	74,830
Lakeland, FL	262,596
Lancaster, PA	402,004
Lancaster—Palmdale, CA	341,219
Lansing, MI	313,532
Laredo, TX	235,730
Las Cruces, NM	128,600
Las Vegas—Henderson, NV	1,886,011
Lawrence, KS	88,053
Lawton, OK	94,457
Lebanon, PA	77,086
Lee's Summit, MO	85,081
Leesburg—Eustis—Tavares, FL	131,337
Leominster—Fitchburg, MA	116,960
Lewiston, ID—WA	51,924
Lewiston, ME	59,397

Urbanized area	Population
Lexington Park—California—Chesapeake Ranch Estates, MD*	58,875
Lexington-Fayette, KY	290,263
Lima, OH	72,852
Lincoln, NE	258,719
Little Rock, AR	431,388
Livermore, CA	81,624
Lodi, CA	68,738
Logan, UT	94,983
Lompoc, CA	51,509
Longmont, CO	90,897
Longview, TX	98,884
Longview, WA—OR	63,952
Lorain—Elyria, OH	180,956
Los Angeles—Long Beach—Anaheim, CA	12,150,996
Los Lunas, NM*	63,758
Louisville/Jefferson County, KY—IN	972,546
Lubbock, TX	237,356
Lynchburg, VA	116,636
Macon, GA	137,570
Madera, CA	78,413
Madison, WI	401,661
Manchester, NH	158,377
Mandeville—Covington, LA	88,925
Manhattan, KS*	54,622
Mankato, MN*	57,584
Mansfield, OH	75,250
Manteca, CA	83,578
Marysville, WA	145,140
Mauldin—Simpsonville, SC	120,577
Mayagüez, PR	109,572
McAllen, TX	728,825
McKinney, TX	170,030
Medford, OR	154,081
Memphis, TN—MS—AR	1,060,061
Merced, CA	136,969
Miami, FL	5,502,379
Michigan City—La Porte, IN—MI	66,025
Middletown, NY	58,381
Middletown, OH	97,503
Midland, MI*	59,014
Midland, TX	117,807
Milwaukee, WI	1,376,476
Minneapolis—St. Paul, MN—WI	2,650,890
Mission Viejo—Lake Forest—San Clemente, CA	583,681
Missoula, MT	82,157
Mobile, AL	326,183
Modesto, CA	358,172
Monessen—California, PA	66,086
Monroe, LA	116,533
Monroe, MI	51,240
Montgomery, AL	263,907
Morgantown, WV	70,350
Morristown, TN	59,036
Mount Vernon, WA	62,966
Muncie, IN	90,580
Murfreesboro, TN	133,228
Murrieta—Temecula—Menifee, CA	441,546
Muskegon, MI	161,280
Myrtle Beach—Socastee, SC—NC	215,304
Nampa, ID	151,499
Napa, CA	83,913
Nashua, NH—MA	226,400
Nashville-Davidson, TN	969,587
New Bedford, MA	149,443
New Bern, NC*	50,503
New Haven, CT	562,839
New Orleans, LA	899,703
New York—Newark, NY—NJ—CT	18,351,295
Newark, OH	76,068
Norman, OK	103,898
North Port—Port Charlotte, FL	169,541
Norwich—New London, CT—RI	209,190
Ocala, FL	156,909
Odessa, TX	126,405
Ogden—Layton, UT	546,026
Oklahoma City, OK	861,505
Olympia—Lacey, WA	176,617
Omaha, NE—IA	725,008
Orlando, FL	1,510,516
Oshkosh, WI	74,495
Owensboro, KY	70,543
Oxnard, CA	367,260
Palm Bay—Melbourne, FL	452,791
Palm Coast—Daytona Beach—Port Orange, FL	349,064
Panama City, FL	143,280
Parkersburg, WV—OH	67,229
Pascagoula, MS	50,428
Pensacola, FL—AL	340,067
Peoria, IL	266,921
Petaluma, CA	64,078
Philadelphia, PA—NJ—DE—MD	5,441,567
Phoenix—Mesa, AZ	3,629,114
Pine Bluff, AR	53,495
Pittsburgh, PA	1,733,853
Pittsfield, MA	59,124
Pocatello, ID	69,809
Ponce, PR	149,539
Port Arthur, TX	153,150
Port Huron, MI	87,106
Port St. Lucie, FL	376,047
Porterville, CA	70,272
Portland, ME	203,914
Portland, OR—WA	1,849,898
Portsmouth, NH—ME	88,200
Pottstown, PA	107,682
Poughkeepsie—Newburgh, NY—NJ	423,566
Prescott Valley—Prescott, AZ	84,744
Providence, RI—MA	1,190,956
Provo—Orem, UT	482,819
Pueblo, CO	136,550
Racine, WI	133,700
Raleigh, NC	884,891
Rapid City, SD	81,251
Reading, PA	266,254
Redding, CA	117,731
Reno, NV—CA	392,141
Richmond, VA	953,556
Riverside—San Bernardino, CA	1,932,666
Roanoke, VA	210,111
Rochester, MN	107,677
Rochester, NY	720,572
Rock Hill, SC	104,996
Rockford, IL	296,863
Rocky Mount, NC	68,243
Rome, GA	60,851
Round Lake Beach—McHenry—Grayslake, IL—WI	290,373
Sacramento, CA	1,723,634
Saginaw, MI	126,265
Salem, OR	236,632
Salinas, CA	184,809
Salisbury, MD—DE	98,081
Salt Lake City—West Valley City, UT	1,021,243
San Angelo, TX	92,984
San Antonio, TX	1,758,210
San Diego, CA	2,956,746
San Francisco—Oakland, CA	3,281,212
San Germán—Cabo Rojo—Sabana Grande, PR	118,199
San Jose, CA	1,664,496
San Juan, PR	2,148,346
San Luis Obispo, CA	59,219
San Marcos, TX*	52,826
Santa Barbara, CA	195,861
Santa Clarita, CA	258,653
Santa Cruz, CA	163,703
Santa Fe, NM	89,284
Santa Maria, CA	130,447
Santa Rosa, CA	308,231
Sarasota—Bradenton, FL	643,260
Saratoga Springs, NY	64,100
Savannah, GA	260,677
Scranton, PA	381,502
Seaside—Monterey, CA	114,237
Seattle, WA	3,059,393
Sebastian—Vero Beach South—Florida Ridge, FL	149,422
Sebring—Avon Park, FL*	61,625
Sheboygan, WI	71,313
Sherman, TX	61,900
Shreveport, LA	298,317
Sierra Vista, AZ*	52,745
Simi Valley, CA	125,206
Sioux City, IA—NE—SD	106,494
Sioux Falls, SD	156,777
Slidell, LA	91,151
South Bend, IN—MI	278,165
South Lyon—Howell, MI	119,509
Spartanburg, SC	180,786
Spokane, WA	387,847
Spring Hill, FL	148,220
Springfield, IL	161,316
Springfield, MA—CT	621,300
Springfield, MO	273,724
Springfield, OH	85,256
St. Augustine, FL	69,173
St. Cloud, MN	110,621
St. George, UT	98,370
St. Joseph, MO—KS	81,176
St. Louis, MO—IL	2,150,706
State College, PA	87,454
Staunton—Waynesboro, VA*	56,611
Stockton, CA	370,583
Sumter, SC	73,107
Syracuse, NY	412,317
Tallahassee, FL	240,223
Tampa—St. Petersburg, FL	2,441,770
Temple, TX	90,390
Terre Haute, IN	92,742
Texarkana—Texarkana, TX—AR	78,162
Texas City, TX	106,383
Thousand Oaks, CA	214,811
Titusville, FL	54,386
Toledo, OH—MI	507,643
Topeka, KS	150,003
Tracy, CA	87,569
Trenton, NJ	296,668
Tucson, AZ	843,168
Tulsa, OK	655,479
Turlock, CA	99,904
Tuscaloosa, AL	139,114
Twin Rivers—Hightstown, NJ	64,037
Tyler, TX	130,247
Uniontown—Connellsville, PA	51,370
Urban Honolulu, HI	802,459
Utica, NY	117,328
Vacaville, CA	93,141
Valdosta, GA	77,085

Urbanized area	Population
Vallejo, CA	165,074
Victoria, TX	63,683
Victorville—Hesperia, CA	328,454
Villas, NJ	51,291
Vineland, NJ	95,259
Virginia Beach, VA	1,439,666
Visalia, CA	219,454
Waco, TX	172,378
Waldorf, MD	109,919
Walla Walla, WA—OR*	55,805
Warner Robins, GA	133,109
Washington, DC—VA—MD	4,586,770
Waterbury, CT	194,535
Waterloo, IA	113,418
Watertown, NY*	57,840
Watsonville, CA	73,534
Wausau, WI	74,632
Weirton—Steubenville, WV—OH—PA	70,889
Wenatchee, WA	67,227
West Bend, WI*	68,444
Westminster—Eldersburg, MD	72,714
Wheeling, WV—OH	81,249
Wichita Falls, TX	99,437
Wichita, KS	472,870
Williamsburg, VA*	75,689
Williamsport, PA	56,142
Wilmington, NC	219,957
Winchester, VA	69,449
Winston-Salem, NC	391,024
Winter Haven, FL	201,289
Woodland, CA*	55,513
Worcester, MA—CT	486,514
Yakima, WA	129,534
Yauco, PR	90,899
York, PA	232,045
Youngstown, OH—PA	387,550
Yuba City, CA	116,719
Yuma, AZ—CA	135,267
Zephyrhills, FL	66,609

B. List of Urban Clusters in the United States, Puerto Rico, and the Island Areas

An alphabetical list of all qualifying urban clusters follows. The population counts relate to data reported for the 2010 Census.

Urban cluster	Population
Abbeville, LA	19,824
Abbeville, SC	5,243
Abbotsford, WI	3,966
Aberdeen, MS	4,666
Aberdeen, SD	25,977
Aberdeen, WA	29,856
Abernathy, TX	2,785
Abilene, KS	7,054
Abingdon, IL	3,389
Ada, OH	5,945
Ada, OK	17,400
Adams, NY	2,542
Adel, GA	6,986
Adel, IA	3,170
Adjuntas, PR	11,122
Adrian, MI	44,823
Agat, GU	10,093
Ahoskie, NC	4,951
Air Force Academy, CO	5,512
Ajo, AZ	3,076
Akron, NY	2,982
Alachua, FL	4,114
Alamogordo, NM	31,862
Alamosa, CO	9,751
Albany, MN	2,564
Albemarle, NC	16,823
Albert Lea, MN	17,868
Albertville, AL	36,815
Albia, IA	3,573
Albion, MI	9,219
Albion, NY	8,171
Albion, PA	4,574
Alderson, WV	2,632
Aledo, IL	3,655
Aledo, TX	4,854
Alexander City, AL	9,400
Alexandria, MN	16,983
Alfred, NY	4,322
Algoma, WI	3,070
Algona, IA	5,340
Alice, TX	20,974
Allegan, MI	6,322
Allendale, SC	3,307
Alliance, NE	8,486
Alliance, OH	32,533
Alma, GA	3,408
Alma—St. Louis, MI	16,924
Almont, MI	2,719
Alpena, MI	14,258
Alpine, TX	6,013
Altavista, VA	4,663
Alturas, CA	2,910
Altus, OK	19,900
Alva, OK	5,620
Alvarado, TX	4,133
American Falls, ID	4,488
Americus, GA	19,106
Amery, WI	2,832
Amite City, LA	6,161
Amory, MS	6,566
Amouli, AS	4,515
Amsterdam, NY	22,262
Anaconda-Deer Lodge County, MT	6,170
Anacortes, WA	16,712
Anadarko, OK	5,929
Anamosa, IA	5,497
Anchorage Northeast, AK	28,568
Andalusia, AL	6,655
Andrews, SC	3,903
Andrews, TX	12,346
Angels, CA	3,751
Angola, IN	11,196
Anna, IL	6,078
Anna, TX	10,746
Annandale, MN	3,262
Antigo, WI	8,158
Apalachicola, FL	3,691
Apple Valley, OH	4,835
Arab, AL	8,012
Arbuckle, CA	2,652
Arcade, NY	3,048
Arcadia, LA	2,894
Arcadia, WI	2,993
Arcadia—Southeast Arcadia, FL	17,490
Arcata-McKinleyville, CA	32,364
Archbold, OH	4,760
Archer Lodge—Clayton, NC	13,288
Arcola, IL	2,874
Ardmore, OK	20,888
Arizona City, AZ	10,531
Arkadelphia, AR	10,491
Arkansas City, KS	13,026
Arlington, TN	11,502
Artesia, NM	12,764
Arvin, CA	19,573
Ashburn, GA	4,489
Ashdown, AR	4,146
Asheboro, NC	37,792
Ashland City, TN	3,384
Ashland, MO	3,527
Ashland, NE	2,631
Ashland, OH	20,226
Ashland, PA	7,820
Ashland, WI	7,293
Ashtabula, OH	29,346
Ashville, OH	6,222
Aspen, CO	7,710
Astoria, OR	14,115
Atchison, KS—MO	11,166
Athens, AL	24,956
Athens, OH	28,286
Athens, TN	15,985
Athens, TX	12,169
Athol, MA	12,834
Atlanta, TX	5,732
Atlantic, IA	6,471
Atmore, AL	6,565
Atoka, TN	18,885
Attica, IN	5,193
Attica, NY	6,828
Au Sable, MI	6,384
Aubrey, TX	4,139
Auburn, IL	4,433
Auburn, IN	21,712
Auburn, NE	3,474
Auburn, NY	32,274
Auburn—North Auburn, CA	33,157
Augusta, KS	9,350
Augusta, ME	22,637
Aumsville, OR	3,692
Aurora, MO	8,365
Aurora, NE	4,466
Austin, MN	25,103
Ava, MO	2,857
Avalon, CA	3,652
Avenal, CA	15,486
Avon, NY	4,973
Avra Valley, AZ	3,869
Aztec, NM	8,456
Bad Axe, MI	3,490
Bainbridge, GA	12,118
Baker City, OR	9,518
Bald Knob, AR	2,517
Baldwin City, KS	4,428
Baldwin, WI	5,831
Ballinger, TX	3,705
Baltimore, OH	3,503
Bamberg, SC	3,492
Bandon, OR	3,119
Bar Harbor, ME	2,575
Baraboo, WI	13,759
Barbourville, KY	6,300
Bardstown, KY	18,702
Barnesville, GA	7,167
Barnesville, OH	4,351
Barnwell, SC	3,949
Barre—Montpelier, VT	21,675
Barron, WI	3,292
Barrow, AK	3,835
Barstow, CA	28,973
Bartlesville, OK	38,874
Bartlett, TX	2,653
Basalt—El Jebel, CO	8,531
Basehor, KS	3,849
Bastrop, LA	13,979
Bastrop, TX	13,371
Batavia, NY	17,834
Batesburg-Leesville, SC	5,267

Urban cluster	Population
Batesville, AR	11,513
Batesville, IN	7,734
Batesville, MS	7,309
Bath, NY	7,124
Battle Mountain, NV	3,520
Battlement Mesa, CO	5,071
Baxley, GA	5,208
Baxter Springs, KS	5,089
Bay City, TX	18,745
Bay Minette, AL	7,486
Bayard, NM	4,309
Bayfield, CO	2,578
Bealeton, VA	6,621
Beardstown, IL	6,530
Beatrice, NE	12,405
Beaufort—Port Royal, SC	48,807
Beaver Dam, KY	6,321
Beaver Dam, WI	17,833
Beaver, UT	2,882
Becker, MN	3,898
Bedford, IN	14,977
Bedford, NY	2,679
Bedford, PA	4,693
Bedford, VA	6,829
Beebe, AR	6,714
Beecher, IL	4,148
Beeville, TX	18,168
Belding, MI	5,789
Belfair, WA	3,331
Belfast, ME	3,358
Belgrade, MT	13,797
Belle Fourche, SD	5,240
Belle Glade, FL	24,870
Belle Plaine, MN	6,174
Bellefontaine, OH	13,235
Bellefonte, PA	12,888
Bellevue, IA	2,543
Bellevue, OH	8,413
Bellows Falls, VT—NH	5,713
Bells, TN	4,758
Bellville, TX	4,002
Beloit, KS	3,295
Belterra, TX	3,731
Belton, SC	5,443
Belvidere, NJ—PA	3,881
Belzoni, MS	4,702
Bemidji, MN	14,626
Bennettsville, SC	13,006
Bennington, VT	12,723
Benson, AZ	4,036
Benson, MN	3,191
Benson, NC	3,107
Benton City, WA	4,140
Benton, IL	7,778
Benton, KY	4,447
Benton, LA	5,371
Berea, KY	15,590
Berlin, NH	11,159
Berlin, WI	4,891
Berne, IN	5,490
Berrien Springs, MI	7,358
Berryville, AR	4,800
Berryville, VA	4,277
Bethany, MO	2,652
Bethel, AK	4,434
Bethel, OH	3,239
Beulah, ND	2,949
Bicknell, IN	3,217
Big Bear City, CA	15,873
Big Lake, TX	2,919
Big Pine Key, FL	7,540
Big Rapids, MI	14,241
Big Spring, TX	27,987
Big Stone Gap, VA	8,240
Birch Bay, WA	12,737
Bisbee, AZ	5,541
Biscoe, NC	2,821
Bishop, CA	9,935
Bishop, TX	3,116
Bishopville, SC	5,391
Black River Falls, WI	5,677
Blackfoot, ID	15,352
Blackshear, GA	3,873
Blackstone, VA	3,232
Blackwell, OK	6,916
Blair, NE	7,844
Blairsville, PA	7,060
Blakely, GA	3,748
Blanchard, OK	3,434
Blanchester, OH	4,184
Blanding, UT	3,264
Blissfield, MI	3,303
Bloomer, WI	3,348
Bloomfield, IN	2,521
Bloomfield, NM	9,892
Blountstown, FL	4,751
Blue Earth, MN	3,257
Bluefield, WV—VA	44,092
Bluffton, IN	9,952
Bluffton, OH	4,215
Blythe, CA—AZ	12,967
Blytheville, AR	18,219
Boardman, OR	3,362
Boerne, TX	10,467
Bogalusa, LA	12,213
Boiling Spring Lakes, NC	4,397
Boiling Springs, NC	4,549
Bolivar, MO	9,693
Bolivar, OH	3,717
Bolivar, TN	5,394
Bonadelle Ranchos-Madera Ranchos, CA	8,024
Bonham, TX	9,995
Bonifay, FL	4,230
Bonneauville, PA	4,427
Bonners Ferry, ID	2,613
Boone, IA	12,793
Boone, NC	22,763
Booneville, AR	3,335
Booneville, MS	6,050
Boonville, IN	6,258
Boonville, MO	9,229
Borger, TX	13,574
Boscobel, WI	3,261
Boulder City, NV	13,866
Bowie, TX	5,143
Bowling Green, MO	5,356
Bowling Green, OH	30,738
Box Elder, SD	7,885
Boyne City, MI	3,501
Bozeman, MT	43,164
Brackettville, TX	2,862
Bradford, PA—NY	12,083
Brady, TX	5,357
Braidwood—Coal City—Wilmington, IL	22,685
Brainerd, MN	19,812
Brandon, SD	8,173
Branson, MO	22,645
Brattleboro, VT—NH	9,980
Brawley, CA	25,032
Brazoria, TX	3,908
Breaux Bridge, LA	18,465
Breckenridge, CO	7,179
Breckenridge, TX	5,839
Breese, IL	5,800
Bremen, GA	6,516
Bremen, IN	4,663
Brenham, TX	15,682
Brent, AL	5,525
Brevard, NC	13,121
Brewton, AL	6,866
Bridgeport, TX	5,646
Bridgeton, NJ	35,022
Bridgeville, DE	3,343
Brillion, WI	2,968
Brinkley, AR	2,528
Bristow, OK	4,110
Broadway, VA	6,228
Brockport, NY	20,255
Brockway, PA	2,856
Brodhead, WI	3,506
Broken Bow, NE	3,537
Broken Bow, OK	4,253
Brookfield, MO	4,281
Brookhaven, MS	10,635
Brookings, OR	10,915
Brookings, SD	22,482
Brooklyn, MI	2,773
Brookshire, TX	4,486
Brookville, PA	4,542
Brownfield, TX	9,530
Browning, MT	4,624
Browns Mills—Fort Dix, NJ	37,985
Brownstown, IN	3,149
Brownsville, TN	9,879
Brownwood, TX	22,711
Brunswick, MD—VA	8,495
Brunswick, ME	29,159
Brush, CO	5,816
Bryan, OH	9,762
Buckeye, AZ	19,424
Buckhannon, WV	8,731
Buckhead (Bryan County), GA	5,168
Buckner, MO	3,034
Bucyrus, OH	12,401
Buena Vista, CO	4,483
Buena Vista, VA	6,536
Buffalo, MN	15,972
Buffalo, MO	3,031
Buffalo, WY	4,368
Buhl, ID	4,138
Buies Creek, NC	5,628
Bullhead City, AZ—NV	48,656
Bunkie, LA	4,090
Buras, LA	3,767
Burgaw, NC	3,456
Burgettstown, PA	3,380
Burkburnett, TX	10,002
Burley, ID	15,977
Burlington, CO	4,243
Burlington, IA—IL	29,569
Burlington, KS	2,503
Burlington, WI	23,534
Burnet, TX	5,428
Burney, CA	3,171
Burns, OR	4,131
Burnt Store Marina, FL	3,061
Bushnell, FL	3,500
Bushnell, IL	3,045
Butler, IN	2,651
Butler, MO	3,875
Butler, PA	40,352
Butner, NC	16,975
Butte-Silver Bow, MT	30,287
Byron, IL	7,057
Byron, MN	4,864
Cache, OK	2,600
Cactus, TX	3,292
Cadillac, MI	11,690
Cadiz, KY	2,960
Cadiz, OH	2,521

Urban cluster	Population
Cairo, GA	9,414
Cairo, IL	2,833
Calais, ME	2,504
Caldwell, OH	5,488
Caldwell, TX	4,012
Caledonia, MN	2,749
Calhoun, GA	31,493
California City, CA	10,908
California, MO	4,181
Calipatria, CA	3,538
Calistoga, CA	5,155
Camano North, WA	2,529
Camano, WA	6,157
Cambria, CA	5,865
Cambridge City, IN	3,805
Cambridge Springs, PA	2,602
Cambridge, MD	14,255
Cambridge, MN	14,270
Cambridge, OH	15,232
Cambridge, WI	2,577
Camden, AR	11,401
Camden, ME	3,968
Camden, SC	13,546
Camden, TN	3,552
Camdenton, MO	3,632
Cameron, MO	9,782
Cameron, TX	5,389
Camilla, GA	6,939
Camp Verde, AZ	5,305
Campbellsville, KY	11,719
Canadian, TX	2,781
Canby, OR	17,119
Cannon Falls, MN	3,931
Cañon City, CO	27,139
Canton, IL	14,818
Canton, MS	15,321
Canton, NY	6,489
Canton, SD	2,679
Canton, TX	3,563
Canyon Lake, TX	5,277
Canyon, TX	13,440
Captain Cook, HI	4,175
Carbondale, CO	7,159
Carey, OH	3,575
Caribou, ME	3,974
Carlinville, IL	5,953
Carlisle, IA	3,968
Carlsbad, NM	29,839
Carlton, OR	3,178
Carlyle, IL	4,301
Carmel Valley Village, CA	3,122
Carmi, IL	5,568
Caro, MI	5,113
Carrizo Springs, TX	6,050
Carroll, IA	9,984
Carrollton, GA	42,872
Carrollton, KY	5,165
Carrollton, MO	3,296
Carrollton, OH	3,498
Carthage, IL	2,582
Carthage, MO	15,496
Carthage, MS	4,478
Carthage, TN	3,282
Carthage, TX	6,492
Caruthersville, MO	5,786
Casey, IL	2,834
Cashmere, WA	4,725
Cassville, MO	4,084
Castle Dale, UT	2,893
Castle Rock, WA	2,514
Castroville, TX	4,040
Catskill, NY	6,453
Cazenovia, NY	3,114
Cedar City, UT	33,200
Cedar Springs, MI	3,579
Cedaredge, CO	3,550
Cedartown, GA	12,502
Cedarville, OH	4,041
Celina, OH	11,259
Center, TX	5,234
Centerville, IA	5,380
Central City, NE	2,821
Central City—Greenville, KY	9,943
Centralia, IL	17,296
Centralia, MO	3,813
Centralia, WA	39,517
Centre, AL	3,707
Centreville, MD	4,285
Century, FL—AL	3,321
Chadron, NE	5,515
Chaffee, MO	2,973
Chandler, OK	2,704
Chanute, KS	9,059
Chaparral, NM	12,328
Chardon, OH	8,028
Chariton, IA	3,893
Charles City, IA	7,706
Charles Town—Ranson, WV	21,019
Charleston, IL	21,810
Charleston, MO	5,893
Charleston, MS	2,930
Charlestown, IN	6,921
Charlestown, NH	2,815
Charlestown, RI	2,942
Charlevoix, MI	4,179
Charlotte Amalie—Tutu, VI	50,916
Charlotte, MI	12,682
Chase City, VA	2,666
Chatfield, MN	2,604
Chattahoochee, FL	5,508
Cheboygan, MI	4,517
Checotah, OK	2,572
Chelan, WA	5,704
Chelsea, MI	5,329
Cheney, WA	10,569
Cheraw, SC	8,160
Cherokee Village, AR	3,443
Cherokee, IA	4,662
Cherryville, NC	6,340
Chesapeake Beach, MD	23,700
Chesnee, SC	3,003
Chester, IL	8,450
Chester, NY	5,691
Chester, SC	9,351
Chestertown, MD	7,153
Chetek, WI	2,830
Chickasha, OK	15,739
Childress, TX	4,707
Chillicothe, MO	9,633
Chillicothe, OH	32,263
Chilton, WI	3,590
Chinle, AZ	3,407
Chino Valley, AZ	10,783
Chipley, FL	3,846
Chisholm, MN	4,622
Chittenango, NY	5,083
Chowchilla, CA	11,843
Christiansted, VI	46,601
Christopher, IL	3,610
Church Point, LA	4,588
Churchville, NY	3,134
Circleville, OH	14,965
Cisco, TX	3,658
Clanton, AL	5,785
Clare, MI	5,597
Claremont, NH	9,598
Claremore, OK	25,164
Clarinda, IA	5,415
Clarion, IA	2,639
Clarion, PA	9,373
Clarksburg, WV	43,988
Clarksdale, MS	17,783
Clarksville, AR	7,313
Clarksville, TX	3,121
Claxton, GA	4,259
Clay Center, KS	4,307
Clayton, GA	3,372
Cle Elum, WA	3,539
Clear Lake, IA	7,944
Clearfield, PA	10,903
Clearlake Riviera, CA	2,806
Clearlake, CA	15,944
Clearwood, WA	2,611
Cleburne, TX	35,122
Cleveland, GA	4,399
Cleveland, MS	15,722
Cleveland, OK	3,128
Cleveland, TX	9,960
Clewiston, FL	12,833
Clifton Forge, VA	5,311
Clifton Springs, NY	6,444
Clifton, AZ	4,508
Clifton, TX	3,421
Clinton, IA—IL	32,332
Clinton, IL	8,487
Clinton, IN	6,425
Clinton, MO	8,740
Clinton, NC	9,538
Clinton, OK	8,426
Clinton, SC	11,176
Clintonville, WI	4,481
Cloquet, MN	12,936
Clover, SC	6,513
Cloverdale, CA	9,166
Clovis, NM	41,570
Clyde, OH	6,039
Clyde, TX	3,768
Coalinga, CA	12,702
Coamo, PR	38,047
Cobleskill, NY	5,618
Cochran, GA	6,324
Coco—Salinas, PR	22,102
Cody, WY	9,338
Coeburn, VA	3,179
Coffeyville, KS—OK	10,909
Cokato, MN	4,244
Colby, KS	5,463
Colchester, CT	10,098
Cold Spring, MN	4,324
Cold Spring, NY	3,276
Coldwater, MI	16,876
Coldwater, OH	4,473
Coleman, TX	4,310
Colfax, CA	3,144
Colfax, WA	2,720
Collinsville, OK	4,248
Colonial Beach, VA	3,693
Colorado City, AZ—UT	8,233
Colorado City, TX	5,948
Columbia City, IN	9,225
Columbia Falls, MT	6,029
Columbia, KY	4,579
Columbia, MS	7,294
Columbia, TN	34,965
Columbiana, AL	2,642
Columbiana, OH	8,101
Columbus AFB, MS	3,140
Columbus, KS	3,272
Columbus, MS	31,174
Columbus, NE	22,106
Columbus, TX	4,176
Columbus, WI	6,623

Urban cluster	Population
Colusa, CA	6,791
Colville, WA	4,966
Comanche, TX	3,988
Comfort, TX	2,653
Commerce, GA	6,624
Commerce, TX	7,717
Concord, NH	42,611
Concordia, KS	5,340
Conesus Lake, NY	4,858
Conneaut, OH	14,109
Connell, WA	4,076
Connersville, IN	15,347
Conrad, MT	2,578
Constantine, MI	4,074
Cookeville, TN	44,207
Coolidge, AZ	10,919
Coopersville, MI	3,951
Coos Bay, OR	31,386
Coquille, OR	4,359
Corcoran, CA	25,516
Cordele, GA	12,416
Corinth, MS	12,469
Corinth, NY	3,995
Cornelia—Baldwin, GA	18,578
Corning, AR	3,180
Corning, CA	8,553
Corning, NY	20,477
Corona de Tucson, AZ	5,469
Corry, PA	6,571
Corsicana, TX	22,599
Cortez, CO	8,380
Cortland, NY	27,493
Corydon, IN	5,506
Coshocton, OH	11,517
Cottage Grove, OR	11,007
Cottonport, LA	3,631
Cottonwood, CA	4,419
Cottonwood—Verde Village, AZ	26,650
Cotulla, TX	3,694
Country Lakes, MD	2,603
Covington, IN	2,625
Covington, OH	2,727
Covington, TN	8,578
Covington, VA	8,430
Coxsackie, NY	6,341
Cozad, NE	3,863
Craig, CO	10,021
Crane, TX	3,907
Crawfordsville, IN	18,012
Crawfordville, FL	8,342
Crescent City, CA	18,976
Crescent City, FL	2,812
Cresco, IA	3,540
Cresson, PA	11,106
Creston, IA	7,617
Crestview, FL	32,432
Creswell, OR	6,320
Crete, NE	6,948
Crewe, VA	4,323
Crisfield, MD	3,600
Crittenden, KY	4,221
Crockett, TX	6,292
Crooked Lake Park, FL	4,335
Crookston, MN	7,964
Crooksville, OH	4,866
Crosby, MN	3,478
Cross City, FL	3,773
Crossett, AR	7,835
Crossville, TN	16,337
Crowley, LA	14,908
Crozet, VA	5,527
Cruz Bay, VI	3,090
Crystal City, TX	7,236
Crystal River, FL	4,388
Crystal Springs, MS	5,269
Cuba, MO	3,273
Cuero, TX	8,099
Cullman, AL	18,356
Cullowhee, NC	10,837
Culpeper, VA	17,778
Cumberland, KY	3,711
Curwensville, PA	2,751
Cushing, OK	6,742
Cut Bank, MT	2,878
Cuthbert, GA	3,811
Cynthiana, KY	6,421
Dahlgren, VA—MD	3,515
Dahlonega, GA	4,812
Daingerfield, TX	4,976
Dalhart, TX	7,716
Dallas, OR	15,340
Dalton, OH	2,595
Dandridge, TN	4,959
Dansville, NY	5,141
Danville, KY	18,887
Danville, VA—NC	49,344
Darbydale, OH	6,195
Darien, GA	3,682
David City, NE	2,879
Davis Junction, IL	2,631
Davis, OK	2,591
Dawson, GA	4,466
Dayton, NV	11,127
Dayton, TN	10,174
Dayton, TX	12,075
Dayton, WA	2,681
De Funiak Springs, FL	5,812
De Motte, IN	4,652
De Queen, AR	6,209
De Soto, KS	4,701
De Soto, MO	7,203
De Witt, IA	4,639
Decatur, IN	10,440
Decatur, TX	5,910
Decorah, IA	8,637
Dededo—Machanao—Apotgan, GU	139,825
Deer Lodge, MT	3,217
Deer Park, WA	3,463
Deerwood, TX	3,797
Defiance, OH	18,306
Del Rio, TX	43,914
Delano, MN	5,255
Delavan, WI	12,158
Delhi, LA	2,770
Delhi, NY	2,953
Dell Rapids, SD	3,584
Delphi, IN	3,008
Delphos, OH	7,440
Delta, CO	7,849
Delta, OH	3,158
Delta, UT	3,258
Deming, NM	14,903
Demopolis, AL	6,452
Denison, IA	8,240
Denmark, SC	3,781
Denton Southwest, TX	3,307
Denton, MD	4,771
Denver City, TX	4,938
DeQuincy, LA	5,017
DeRidder, LA	13,341
Dermott, AR	2,816
Desert Hot Springs, CA	39,445
Detroit Lakes, MN	7,973
Devils Lake, ND	7,444
Devine, TX	5,798
DeWitt, AR	3,185
Dexter, MO	9,053
Diamondhead, MS	7,855
Diboll, TX	4,461
Dickinson, ND	17,586
Dickson, TN	16,016
Dilley, TX	3,938
Dillon, MT	4,609
Dillon, SC	9,777
Dimmitt, TX	4,373
Discovery Bay, CA	14,044
Dixon, CA	18,445
Dixon, IL	16,858
Dodge Center, MN	2,641
Dodge City, KS	27,316
Dodgeville, WI	4,756
Donaldsonville, LA	14,571
Donalsonville, GA	2,745
Dorr, MI	4,702
Dos Palos, CA	6,713
Douglas, AZ	17,673
Douglas, GA	14,154
Douglas, MI	2,570
Douglas, WY	6,175
Dowagiac, MI	6,082
Downs, IL	2,666
Dryden, NY	3,882
Du Quoin, IL	6,467
Dublin, GA	20,999
Dublin, TX	3,543
DuBois, PA	11,898
Dumas, AR	5,023
Dumas, TX	14,836
Duncan, OK	21,301
Dundee, MI	3,799
Dunkirk, IN	3,564
Dunkirk—Fredonia, NY	25,514
Dunlap, TN	3,691
Dunn, NC	14,823
Durand, MI	4,854
Durango, CO	17,982
Durant, MS	2,525
Durant, OK	16,402
Dwight, IL	5,353
Dyer, TN	3,248
Dyersburg, TN	21,903
Dyersville, IA	3,620
Eagar, AZ	6,095
Eagle Grove, IA	3,076
Eagle Lake, TX	3,628
Eagle Mountain South, UT	6,277
Eagle Pass, TX	49,236
Eagle, CO	6,073
Earlimart, CA	13,211
East Aurora, NY	9,841
East Liverpool, OH—WV—PA	31,564
East Palestine, OH	4,944
East Prairie, MO	3,770
East Prospect, PA	2,575
East Quincy, CA	2,674
East Tawas, MI	4,372
East Troy, WI	4,306
Eastland, TX	3,711
Eastman, GA	6,053
Easton, MD	17,132
Eaton Rapids, MI	5,408
Eaton, CO	4,392
Eaton, OH	8,112
Eatonton, GA	3,889
Eatonville, WA	2,801
Ebensburg, PA	4,914
Eden, NC	17,187
Edenton, NC	4,790
Edgefield, SC	4,562
Edgerton, WI	7,208
Edgewood, NM	3,506

Urban cluster	Population
Edinboro, PA	7,263
Edna, TX	5,374
Edwards, CO	17,326
Effingham, IL	13,800
Eielson AFB, AK	2,944
El Campo, TX	11,719
El Dorado Springs, MO	3,454
El Dorado, AR	18,944
El Dorado, KS	14,724
El Paso, IL	2,776
El Reno, OK	15,069
Elberton, GA	5,925
Eldon, MO	4,555
Eldorado at Santa Fe, NM	4,372
Eldorado, IL	4,572
Electra, TX	2,746
Elgin, TX	10,043
Elizabeth City, NC	23,905
Elizabethtown, NC	3,085
Elk City, OK	10,855
Elkhorn, WI	12,484
Elkin, NC	6,521
Elkins, WV	11,061
Elko New Market, MN	3,908
Elko, NV	18,948
Elkton, VA	3,657
Ellensburg, WA	20,987
Ellenville, NY	6,577
Ellijay, GA	3,496
Ellsworth, KS	2,982
Ellsworth, ME	2,805
Ellsworth, WI	2,823
Ellwood City, PA	13,006
Elmwood, IL	2,660
Eloy, AZ	6,963
Elroy, TX	3,708
Elverson, PA	3,697
Elwood, IN	9,421
Ely, MN	3,459
Ely, NV	4,681
Emajagua, PR	9,231
Emerald Bay, TX	3,182
Emmetsburg, IA	3,628
Emmett, ID	9,192
Emmitsburg, MD—PA	6,366
Emporia, KS	24,830
Emporia, VA	7,143
Emporium, PA	2,677
Enfield, NC	2,672
England, AR	2,762
Enid, OK	47,609
Ennis, TX	18,258
Enterprise, AL	36,427
Ephraim, UT	5,781
Ephrata, WA	6,956
Epping, NH	3,490
Erwin, TN	9,788
Escalon, CA	7,157
Escanaba, MI	20,850
Espanola, NM	26,418
Esparto, CA	3,277
Estacada, OR	3,838
Estes Park, CO	7,082
Estherville, IA	6,192
Estrella, AZ	11,108
Etowah, TN	4,129
Eudora, KS	6,140
Eufaula, AL—GA	9,520
Eunice, LA	11,940
Eunice, NM	2,826
Eureka, CA	45,034
Eureka, IL	5,573
Eureka, KS	2,591
Eureka, MO	11,260
Evanston, WY	12,017
Evansville, WI	5,669
Evarts, KY	2,646
Everett, PA	3,220
Evergreen, AL	2,520
Evergreen, CO	13,556
Everson, WA	4,330
Excelsior Springs, MO	10,943
Fabens, TX	8,042
Fair Haven, VT	4,181
Fairbury, IL	3,784
Fairbury, NE	3,912
Fairdale, PA	4,166
Fairfield Glade, TN	5,584
Fairfield Harbour, NC	2,726
Fairfield, IA	10,320
Fairfield, IL	5,039
Fairfield, TX	3,280
Fairmont, MN	9,578
Fairmont, NC	2,507
Fairmont, WV	33,409
Fairmount, IN	2,942
Fairview, TN	6,373
Falfurrias, TX	4,929
Fallon, NV	16,241
Falls City, NE	4,133
Faribault, MN	23,696
Farmersville, TX	3,138
Farmerville, LA	3,883
Farmington, ME	3,819
Farmington, MO	39,370
Farmington, NH	2,957
Farmville, NC	4,815
Farmville, VA	8,999
Fayette, AL	3,408
Fayette, MO	2,654
Fayetteville, TN	9,178
Fearrington Village, NC	2,642
Federalsburg, MD	3,190
Fellsmere, FL	5,294
Fergus Falls, MN	12,081
Fernandina Beach, FL	25,239
Fernley, NV	18,979
Ferriday, LA	5,931
Filer, ID	2,639
Fillmore, CA	15,081
Findlay, OH	48,441
Firebaugh, CA	7,281
Firestone—Frederick, CO	21,474
Fitzgerald, GA	11,638
Flemingsburg, KY	2,795
Flora, IL	4,872
Florence, AZ	16,586
Florence, CO	7,314
Florence, OR	10,177
Floresville, TX	6,068
Floydada, TX	3,009
Foley, AL	26,469
Folkston, GA	5,961
Fordyce, AR	3,844
Forest City, IA	3,966
Forest City, NC	26,418
Forest Lake, MN	21,816
Forest, MS	4,887
Forestville, CA	5,144
Forks, WA	3,940
Forney, TX	27,051
Forrest City, AR	13,690
Forsyth, GA	4,834
Forsyth, MO	6,836
Fort Atkinson, WI	21,105
Fort Bragg, CA	10,348
Fort Branch, IN	4,379
Fort Defiance, AZ—NM	3,602
Fort Dodge, IA	25,122
Fort Irwin, CA	8,845
Fort Leonard Wood, MO	29,257
Fort Lupton, CO	9,055
Fort Madison, IA—IL	10,848
Fort Meade, FL	6,234
Fort Morgan, CO	13,178
Fort Payne, AL	7,018
Fort Plain, NY	5,730
Fort Polk, LA	14,300
Fort Scott, KS	7,895
Fort Stockton, TX	9,339
Fort Valley, GA	10,605
Fortuna, CA	13,084
Fostoria, OH	14,694
Four Corners, FL	35,549
Four Corners, MT	2,527
Fowlerville, MI	3,794
Frankenmuth, MI	4,972
Frankfort, IN	16,684
Frankfort, KY	35,734
Franklin (Venango County), PA	9,581
Franklin, KY	9,442
Franklin, LA	14,617
Franklin, NC	6,781
Franklin, NH	9,582
Franklin, VA	9,209
Franklin—Highland Lake, NJ	35,436
Franklinton, LA	3,506
Fraser, CO	2,583
Frazier Park, CA	3,657
Frederick, OK	3,899
Fredericksburg, TX	11,511
Fredericktown, MO	4,217
Freeport, IL	25,980
Fremont, MI	4,496
Fremont, NE	27,471
Fremont, OH	23,332
Friona, TX	4,106
Fritch, TX	3,968
Front Royal, VA	18,638
Frostproof, FL	7,626
Fulton, KY—TN	4,339
Fulton, MO	12,197
Fulton, MS	3,217
Gaffney, SC	20,844
Gainesville, TX	15,746
Galax, VA	6,915
Galena, IL	3,165
Galena, KS—MO	2,673
Galesburg, IL	36,001
Galion, OH	15,966
Galliano—Larose—Cut Off, LA	21,437
Gallup, NM	23,114
Galt, CA	24,912
Galveston, TX	44,022
Garapan—Dandan, MP	46,203
Garden City, KS	29,942
Gardnerville Ranchos, NV	20,107
Garner, IA	3,115
Garnett, KS	3,336
Garrettsville, OH	6,150
Gatesville, TX	15,310
Gautier, MS	3,957
Gaylord, MI	8,298
Geneseo, IL	6,531
Geneseo, NY	8,329
Geneva, AL	2,654
Geneva, NY	29,990
Geneva, OH	7,660
Genoa, IL	6,413
Genoa, OH	3,118
Georgetown, DE	9,034
Georgetown, KY	30,764

Urban cluster	Population
Georgetown, OH	3,829
Georgetown, SC	12,320
Gibson City, IL	3,615
Giddings, TX	5,030
Gillespie, IL	5,377
Gillette, WY	32,721
Gilman, IL	3,010
Gilmer, TX	4,978
Girard, KS	2,547
Gladwin, MI	2,934
Glasgow, KY	13,569
Glasgow, MT	3,301
Glencoe, MN	5,534
Glendive, MT	6,494
Glennville, GA	3,161
Glenville, WV	3,415
Glenwood Springs, CO	11,581
Glenwood, IA	6,088
Glenwood, MD	3,721
Globe, AZ	13,515
Gloucester Courthouse, VA	4,177
Glouster, OH	2,643
Gloversville, NY	29,226
Gold Beach, OR	2,787
Golden Beach, MD	4,452
Golden Gate Estates, FL	3,953
Goldendale, WA	3,329
Gonzales, CA	8,174
Gonzales, TX	6,877
Gooding, ID	3,726
Goodland, KS	4,553
Goodrich, MI	5,860
Gothenburg, NE	3,515
Gouverneur, NY	4,146
Gowanda, NY	6,323
Graceville, FL	4,037
Grafton, ND	4,219
Grafton, WV	5,923
Graham, TX	9,041
Gramercy—Lutcher, LA	15,279
Granbury, TX	28,250
Grand Bay, AL	4,127
Grand Forks AFB, ND	2,697
Grand Rapids, MN	9,285
Grand Saline, TX	3,236
Grandview, WA	18,407
Granger, WA	3,048
Grangerland, TX	5,756
Grangeville, ID	3,150
Granite Falls, MN	2,842
Granite Falls, WA	6,129
Granite Shoals, TX	5,573
Grants, NM	12,152
Grantsville, UT	6,673
Grantville, GA	2,571
Granville, NY—VT	2,762
Grass Valley, CA	34,308
Gray, GA	4,566
Grayling, MI	3,858
Grayson, KY	5,716
Great Barrington, MA	4,571
Great Bend, KS	16,177
Green Forest, AR	2,656
Green River, WY	12,672
Greenbrier, AR	4,069
Greencastle, IN	10,625
Greeneville, TN	23,957
Greenfield, CA	16,451
Greenfield, MA	22,965
Greenfield, OH	5,100
Greensboro, GA	2,759
Greensburg, IN	11,560
Greentown, IN	3,219
Greenville, AL	6,026
Greenville, IL	6,976
Greenville, MI	9,743
Greenville, MS	35,025
Greenville, OH	13,337
Greenville, PA	10,771
Greenville, TX	23,283
Greenwich, NY	2,551
Greenwood, AR	8,619
Greenwood, MS	22,380
Greenwood, SC	42,103
Grenada, MS	10,481
Gridley, CA	8,393
Grifton, NC	3,688
Grinnell, IA	9,080
Grissom AFB, IN	6,359
Groesbeck, TX	3,948
Grottoes, VA	4,075
Grove City, PA	11,886
Grove, OK	7,158
Guadalupe, CA	7,080
Guerneville, CA	4,805
Gun Barrel City, TX	14,884
Gun Lake, MI	2,660
Gunnison, CO	6,343
Gunnison, UT	4,157
Gustine, CA	5,521
Guthrie, OK	8,191
Guymon, OK	11,338
Gypsum, CO	5,963
Hailey, ID	10,453
Haleiwa—Waialua—Pupukea, HI	13,770
Haleyville, AL	3,922
Half Moon Bay, CA	20,713
Halls, TN	2,735
Hallsville, TX	3,658
Hamburg, AR	2,724
Hamilton, AL	3,207
Hamilton, MT	6,182
Hamilton, NY	4,427
Hamilton, TX	3,034
Hammonton, NJ	13,152
Hampshire, IL	4,619
Hampstead, NC	10,716
Hampton, IA	4,246
Hampton, SC	4,540
Hanceville, AL	2,948
Hannibal, MO	18,472
Hardeeville, SC	2,957
Hardin, MT	3,614
Hardyston Township West, NJ	2,550
Harlan, IA	4,934
Harlan, KY	7,065
Harlem, GA	2,705
Harrah, OK	3,904
Harriman—Kingston—Rockwood, TN	23,515
Harrington, DE	4,448
Harrisburg, IL	9,463
Harrisburg, OR	3,637
Harrisburg, SD	3,071
Harrison, AR	13,950
Harrison, MI	3,589
Harrison, OH—IN	12,910
Harrisonville, MO	9,358
Harrodsburg, KY	8,715
Hart, MI	2,556
Hartford City, IN	6,160
Hartshorne, OK	2,539
Hartsville, SC	15,125
Hartwell, GA	5,884
Harvard, IL	9,940
Haskell, TX	3,090
Hastings, MI	7,713
Hastings, MN	22,328
Hastings, NE	24,312
Havana, FL	2,771
Havana, IL	3,302
Havelock, NC	21,596
Havre, MT	9,657
Hawaiian Paradise Park, HI	20,503
Hawkinsville, GA	3,999
Hawthorne, NV	3,249
Hays, KS	21,180
Hayti, MO	3,489
Hayward, WI	2,616
Hazard, KY	7,444
Hazel Green, AL	3,207
Hazlehurst, GA	4,594
Hazlehurst, MS	4,868
Headland, AL	3,240
Hearne, TX	4,346
Heavener, OK	3,760
Hebbronville, TX	4,378
Heber Springs, AR	6,357
Heber, UT	17,212
Hebron, IN	3,535
Helena, MT	45,055
Helena-West Helena, AR	11,321
Hempstead, TX	5,600
Henderson, NC	20,858
Henderson, TN	6,027
Henderson, TX	15,187
Henrietta, TX	2,731
Henryetta, OK	6,562
Hereford, TX	15,941
Heritage Lake, IN	2,737
Hermiston, OR	27,790
Hesston, KS	3,306
Heyworth, IL	3,016
Hiawatha, KS	3,145
Hibbing, MN	11,616
Hicksville, OH	3,613
Hidden Valley Lake, CA	4,647
Higginsville, MO	4,621
High Springs, FL	3,022
Highland Oaks, TX	2,855
Highland, IL	11,525
Hillsboro, IL	7,261
Hillsboro, KS	2,815
Hillsboro, MO	2,674
Hillsboro, OH	6,668
Hillsboro, TX	8,328
Hillsborough, NH	3,884
Hillsdale, MI	11,646
Hilmar-Irwin, CA	4,852
Hilo, HI	43,925
Hinton, WV	2,635
Hobart, OK	3,622
Hobbs, NM	36,696
Hodgenville, KY	3,413
Hohenwald, TN	3,625
Hoisington, KS	2,709
Holbrook, AZ	3,800
Holden Beach, NC	3,136
Holdenville, OK	5,768
Holdrege, NE	5,340
Holiday Shores, IL	2,804
Hollandale, MS	2,612
Hollister, CA	42,002
Holloman AFB, NM	3,054
Holly Springs, MS	6,160
Holly, MI	8,229
Holton, KS	3,245
Holtville, CA	6,876
Homedale, ID	2,731
Homer, LA	3,034
Homerville, GA	2,690

Urban cluster	Population
Homesteads Addition, TX	6,372
Hominy, OK	3,493
Hondo, TX	6,427
Honea Path, SC	3,505
Honeoye Falls, NY	5,270
Honesdale, PA	5,849
Honokaa, HI	2,667
Hood River, OR—WA	14,653
Hooks, TX	2,977
Hoopeston, IL	5,116
Hoosick Falls, NY	3,592
Hope, AR	9,991
Hopkinsville, KY	32,491
Horicon, WI	3,493
Hornell, NY	10,997
Horse Cave, KY	4,251
Horseshoe Bay, TX	3,134
Hot Springs Village, AR	9,144
Hot Springs, SD	3,550
Houghton Lake, MI	8,300
Houghton, MI	15,452
Houlton, ME	4,128
Houston, MS	2,557
Houtzdale, PA	4,081
Hudson, NY	11,512
Hudson, WI—MN	22,395
Hugo, OK	5,028
Hugoton, KS	3,936
Humboldt, IA	5,243
Humboldt, TN	8,769
Huntingburg, IN	5,501
Huntingdon, PA	11,385
Huntington, IN	18,207
Huntsville, TX	36,928
Huron, CA	6,754
Huron, SD	12,637
Hurricane, UT	16,336
Hutchinson, KS	44,320
Hutchinson, MN	14,054
Huxley, IA	4,094
Idabel, OK	5,940
Ilion—Herkimer, NY	24,792
Imlay City, MI	3,792
Immokalee, FL	23,160
Incline Village, NV—CA	13,022
Independence, IA	5,743
Independence, KS	9,959
Indiana, PA	28,807
Indianola, IA	14,281
Indianola, MS	10,408
Indianola, WA	7,938
Indiantown, FL	6,503
Ingleside—Aransas Pass, TX	16,522
Interlachen, FL	5,805
International Falls, MN	7,055
Iola, KS	5,729
Ione, CA	7,820
Ionia, MI	14,409
Iowa Falls, IA	5,070
Iowa Park, TX	6,285
Iowa, LA	3,252
Iron Mountain—Kingsford, MI—WI	19,228
Iron River, MI	3,208
Ironton, MO	2,673
Ironwood, MI—WI	7,134
Irrigon, OR	2,686
Irvine, KY	3,503
Ishpeming, MI	12,301
Itta Bena, MS	4,223
Jacksboro, TX	4,231
Jackson, AL	2,920
Jackson, CA	7,255
Jackson, GA	5,218
Jackson, KY	2,567
Jackson, MN	3,169
Jackson, WY	11,407
Jacksonville, IL	22,669
Jacksonville, TX	14,075
Jackson—Wellston, OH	11,768
Jaffrey, NH	3,003
Jamestown, ND	15,284
Jamestown, NY	43,404
Jamestown, OH	3,769
Jasper, AL	14,156
Jasper, FL	5,404
Jasper, GA	5,909
Jasper, IN	15,759
Jasper, TN	3,281
Jasper, TX	7,790
Jayuya, PR	11,300
Jean Lafitte, LA	2,700
Jeanerette, LA	6,680
Jefferson Township North, NJ	13,714
Jefferson, GA	10,443
Jefferson, IA	3,906
Jefferson, NC	4,129
Jefferson, OH	3,205
Jena, LA	3,992
Jennings, LA	9,869
Jerome, ID	10,892
Jersey Shore, PA	9,606
Jerseyville, IL	8,989
Jesup, GA	12,660
Jewett City, CT	10,119
Jim Thorpe, PA	5,594
Johnson Creek, WI	2,702
Johnson Lane, NV	5,337
Johnston City, IL	3,621
Johnstown, CO	13,693
Johnstown, OH	4,523
Jones Creek, TX	3,182
Jonesboro, LA	5,609
Jordan, MN	5,207
Junction City, KS	38,787
Junction City, OR	5,966
Junction, TX	2,566
Juneau, AK	24,537
Juneau, WI	2,736
Jupiter Farms, FL	10,962
Justin, TX	2,986
Kailua (Hawaii County)—Holualoa, HI	28,850
Kalaheo, HI	14,840
Kalama, WA	3,310
Kalispell, MT	31,785
Kalkaska, MI	2,668
Kamas, UT	2,645
Kanab, UT	3,212
Kane, PA	3,770
Kapaa, HI	19,063
Kapaau, HI	3,597
Kaplan, LA	4,826
Karnes City, TX	3,015
Kasson, MN	7,048
Kaufman, TX	6,268
Kayenta, AZ	4,688
Kearney, MO	7,368
Kearney, NE	31,287
Keene, NH	22,510
Kekaha, HI	5,313
Kellogg, ID	3,091
Kelseyville, CA	3,277
Kemmerer, WY	3,127
Kenai, AK	4,921
Kendallville, IN	10,399
Kenedy, TX	6,118
Kennebunk, ME	8,240
Kennett, MO	11,241
Kenton, OH	8,360
Keokuk, IA—IL	13,411
Kerman, CA	13,487
Kermit, TX	5,821
Kerrville, TX	28,810
Ketchikan, AK	10,352
Ketchum, ID	3,919
Kewanee, IL	12,857
Kewaunee, WI	2,622
Key Largo, FL	18,121
Key West, FL	32,095
Keyser, WV—MD	7,040
Keystone Heights, FL	6,544
Kiel—New Holstein, WI	6,912
Kihei, HI	25,819
Kilauea, HI	2,611
Kilgore, TX	15,957
Kill Devil Hills, NC	19,095
Kimberling City, MO	3,172
King City, CA	14,529
King George, VA	3,303
Kingfisher, OK	4,144
Kingman, AZ	42,107
Kingman, KS	2,978
Kingsland, TX	6,433
Kingstree, SC	6,095
Kingsville, TX	26,011
Kingwood, WV	3,201
Kinross, MI	6,555
Kinston, NC	29,083
Kirksville, MO	15,914
Kirtland, NM	8,200
Kittanning—Ford City, PA	14,072
Klamath Falls—Altamont, OR	41,434
Knightstown, IN	2,923
Knox, IN	3,309
Knoxville, IA	7,346
Kodiak, AK	9,335
Kosciusko, MS	6,983
Kotzebue, AK	3,200
Krum, TX	4,173
Kuna, ID	15,234
Kutztown, PA	10,002
La Center, WA	2,759
La Conner, WA	3,297
La Follette, TN	21,055
La Grande, OR	14,909
La Grange, NC	2,713
La Grange, TX	5,343
La Junta, CO	8,191
La Pine Northwest, OR	2,651
LaBelle—Port LaBelle, FL	12,054
Laconia, NH	18,636
Ladysmith, WI	3,449
LaFayette, GA	7,364
Lafayette, TN	4,545
Lago Vista, TX	5,281
LaGrange, GA	34,879
Lagrange, IN	3,113
LaGrange, OH	3,246
Lahaina, HI	21,331
Laie—Hauula, HI	15,071
Lake Arrowhead—Crestline, CA	22,175
Lake Arthur, LA	2,786
Lake Bryant, FL	3,552
Lake Butler, FL	5,057
Lake City, FL	25,623
Lake City, MN	5,103
Lake City, SC	8,496
Lake Conroe Eastshore, TX	10,121
Lake Conroe Northshore, TX	2,547
Lake Conroe Westshore, TX	20,569
Lake Crystal, MN	2,558

Urban cluster	Population
Lake Delton, WI	5,473
Lake Geneva, WI	14,649
Lake Holiday, IL	7,072
Lake Isabella, CA	3,271
Lake Lakengren, OH	3,096
Lake Land'Or, VA	6,165
Lake Los Angeles, CA	11,808
Lake Meade, PA	2,563
Lake Mills, WI	6,581
Lake Montezuma, AZ	3,429
Lake Monticello, VA	9,528
Lake Murray North Shore, SC	3,626
Lake Norman of Catawba, NC	5,603
Lake of the Pines, CA	7,926
Lake of the Woods, VA	9,231
Lake of the Woods—Pinetop-Lakeside, AZ	8,805
Lake Panasoffkee, FL	3,365
Lake Park, GA	3,367
Lake Placid, FL	16,351
Lake Placid, NY	3,581
Lake Pocotopaug—East Hampton, CT	9,450
Lake Providence, LA	5,076
Lake Rancho Viejo, CA	2,500
Lake View, AL	3,404
Lake Village, AR	2,586
Lake Wildwood, CA	7,096
Lakeland, GA	2,910
Lakeport, CA	16,583
Lakes—Knik-Fairview—Wasilla, AK	44,236
Lakeview, OR	2,895
Lamar, CO	7,796
Lamar, MO	4,470
Lamesa, TX	11,579
Lampasas, TX	6,080
Lanai City, HI	3,066
Lancaster, KY	3,739
Lancaster, OH	42,557
Lancaster, SC	23,979
Lancaster, WI	3,688
Lander, WY	7,225
Landrum, SC—NC	4,239
Lapeer, MI	13,424
Laramie, WY	31,965
Larned, KS	4,764
Las Animas, CO	4,032
Las Vegas, NM	15,609
Laughlin, NV	5,949
Laurel Lake, NJ	3,796
Laurel, MS	26,131
Laurel, MT	8,505
Laurens, SC	10,336
Laurinburg, NC	21,161
Laurium, MI	7,325
Lawrenceburg, KY	12,475
Lawrenceburg, TN	10,100
Lawrenceburg—Greendale—Aurora, IN	12,977
Lawrenceville, IL	7,067
Lawrenceville, VA	4,032
Le Mars, IA	9,237
Le Roy, IL	3,316
Le Roy, NY	4,275
Le Sueur, MN	3,763
Lead, SD	3,750
Leadville, CO	5,039
Leavenworth, KS	45,283
Leavenworth, WA	3,282
Lebanon, IN	15,415
Lebanon, KY	5,646
Lebanon, MO	14,046
Lebanon, OR	19,744
Lebanon, TN	27,653
Lebanon, VA	3,375
Lebanon—Hanover, NH—VT	25,690
Lee, MA	8,049
Leesburg, GA	3,631
Leesville, LA	9,605
Leitchfield, KY	6,802
Leland, MS	4,539
Lemoore Station, CA	7,438
Lena, IL	2,602
Leonardtown, MD	4,737
Levelland, TX	13,796
Lewes, DE	24,129
Lewisburg, TN	10,464
Lewisburg, WV	6,959
Lewistown, MT	6,090
Lewistown, PA	22,181
Lexington, MO	4,507
Lexington, NE	10,464
Lexington, TN	6,560
Lexington, VA	8,762
Libby, MT	3,978
Liberal, KS	20,329
Liberty, NY	4,470
Liberty, TX	5,801
Ligonier, IN	4,789
Ligonier, PA	3,314
Lihue, HI	13,983
Lillington, NC	3,316
Lincoln City, OR	10,526
Lincoln, IL	18,224
Lincoln, ND	2,992
Lincolnton, NC	22,686
Lindale—Hideaway, TX	10,021
Lindsay, CA	14,610
Lindsay, OK	2,796
Lindsborg, KS	3,405
Lindstrom—Chisago City, MN	8,492
Linton, IN	5,822
Lisbon, OH	5,740
Litchfield, CT	2,590
Litchfield, IL	6,956
Litchfield, MN	6,624
Little Falls, MN	9,024
Little Falls, NY	4,956
Littlefield, TX	5,914
Littlestown, PA	6,302
Littleton, NH	3,518
Live Oak (Sutter County), CA	8,547
Live Oak, FL	6,994
Livermore Falls, ME	3,092
Livingston, MT	8,172
Livingston, TN	3,485
Livingston, TX	5,139
Livonia, LA	3,813
Llano, TX	2,832
Lochbuie, CO	4,120
Lock Haven, PA	17,741
Lockhart, TX	12,337
Lockport, NY	36,024
Locust, NC	2,925
Lodi, OH	2,670
Lodi, WI	3,014
Logan, OH	8,080
Logan, WV	10,747
Logansport, IN	21,561
Lolo, MT	2,739
London, OH	14,260
London—Corbin, KY	37,367
Long Beach, MD	6,476
Long Neck, DE	14,150
Long Prairie, MN	3,356
Lonoke, AR	4,058
Lonsdale, MN	3,466
Loogootee, IN	2,972
Los Alamos, NM	10,893
Los Banos, CA	35,917
Los Molinos, CA	3,800
Louisa, KY—WV	4,253
Louisburg, KS	3,930
Louisburg, NC	3,694
Louisiana, MO	3,091
Louisville, GA	3,273
Louisville, MS	4,624
Lovington, NM	11,592
Lowell, IN	9,844
Lowell, MI	6,803
Lowville, NY	3,562
Lucasville, OH	2,931
Lucedale, MS	2,636
Ludington, MI	10,710
Lufkin, TX	44,927
Lula, GA	2,591
Luling, TX	5,379
Lumberton, NC	29,739
Luray, VA	4,770
Luverne, MN	4,620
Lykens, PA	2,973
Lynden, WA	14,533
Lyndonville, VT	2,924
Lyons, KS	3,652
Lytle, TX	3,475
Mabton, WA	2,534
Macclenny, FL	10,984
Mackinaw, IL	3,452
Macomb, IL	19,945
Macon, MO	5,014
Macon, MS	2,998
Madill, OK	4,419
Madison, FL	3,843
Madison, GA	4,401
Madison, IN—KY	18,271
Madison, SD	6,174
Madison, WV	4,579
Madisonville, KY	24,809
Madisonville, TN	5,391
Madisonville, TX	4,454
Madras, OR	8,010
Magee, MS	4,170
Magnolia, AR	10,438
Magnolia, TX	3,195
Mahomet, IL	11,044
Maiden, NC	3,572
Malakoff, TX	2,969
Malden, MO	4,590
Malone, NY	10,825
Malvern, AR	11,186
Malvern, OH	2,800
Mammoth Lakes, CA	7,693
Mamou, LA	3,894
Manchester, GA	4,096
Manchester, IA	5,032
Manchester, KY	4,657
Manchester, MD	5,319
Manchester, TN	11,379
Mangum, OK	2,954
Manila, AR	3,124
Manistee, MI	9,606
Manistique, MI	3,482
Manitowoc, WI	46,360
Mannford, OK	2,986
Manning, SC	4,998
Manor, TX	5,320
Mansfield, LA	6,061
Mansfield, PA	4,152
Manteo, NC	5,399
Manti, UT	3,290
Many, LA	2,860

Urban cluster	Population
Maquoketa, IA	6,159
Marana West, AZ	5,456
Marathon, FL	8,965
Marble Falls, TX	6,131
Marengo, IL	7,731
Marianna, AR	3,804
Marianna, FL	6,086
Maricao, PR	2,697
Maricopa, AZ	42,337
Marietta, OH—WV	22,428
Marinette—Menominee, WI—MI	19,431
Marion Oaks, FL	14,160
Marion, IN	43,519
Marion, KY	2,718
Marion, NC	13,363
Marion, OH	46,384
Marion, SC	7,464
Marion, VA	7,960
Marks, MS	3,536
Marksville, LA	7,517
Marlin, TX	5,832
Marlow, OK	4,230
Marquette, MI	26,946
Marseilles, IL	4,877
Marshall, IL	3,775
Marshall, MI	7,683
Marshall, MN	13,464
Marshall, MO	12,665
Marshall, TX	21,979
Marshall, WI	3,834
Marshalltown, IA	26,858
Marshfield, MO	6,701
Marshfield, WI	19,421
Martin, TN	11,397
Martinsburg, PA	2,733
Martinsville, IN	13,276
Martinsville, VA	35,091
Marysville, KS	2,937
Marysville, OH	22,348
Maryville, MO	13,220
Mascoutah, IL	7,368
Mason City, IA	27,115
Masontown, PA	4,443
Massena, NY	11,259
Mathis, TX	5,936
Mattawa, WA	4,988
Mattoon, IL	18,978
Mauston, WI	4,401
Maybrook, NY	2,959
Mayfield, KY	11,356
Mayodan, NC	4,382
Maysville, KY—OH	11,454
Mayville, WI	5,134
Mazomanie, WI	2,956
McAlester, OK	19,501
McComb, MS	16,388
McConnelsville, OH	2,652
McCook, NE	7,563
McFarland, CA	12,826
McGehee, AR	3,898
McGregor, TX	4,893
McKenzie, TN	5,066
McLeansboro, IL	2,698
McMinnville, OR	38,970
McMinnville, TN	15,386
McPherson, KS	13,083
McRae, GA	8,747
Meadville, PA	23,887
Mecca, CA	11,253
Medford, WI	4,046
Medical Lake, WA	4,918
Medina, NY	8,382
Medina, TN	3,636
Melrose, MN	3,121
Mena, AR	5,499
Mendota, CA	11,211
Mendota, IL	7,195
Menomonie, WI	17,844
Mercer, PA	3,838
Meridian, MS	41,531
Merrill, WI	10,282
Mescalero Park, TX	3,460
Mesquite, NV—AZ	14,284
Metamora, IL	3,650
Metropolis, IL	6,607
Metter, GA	3,633
Mexia, TX	6,898
Mexico, MO	11,356
Meyersdale, PA	2,596
Miami, OK	16,144
Middlebury, IN	4,064
Middlebury, VT	5,350
Middlefield, OH	4,858
Middleport, OH—WV	8,559
Middlesborough, KY—TN—VA	15,330
Middletown, DE	29,415
Middletown, IN	2,543
Middleville, MI	3,236
Mifflinburg, PA	4,363
Mifflintown, PA	4,372
Milaca, MN	2,831
Milan, MI	7,514
Milan, TN	7,427
Milbank, SD	3,283
Miles City, MT	9,604
Milford, DE	18,009
Milford, NJ—PA	2,776
Milledgeville, GA	29,808
Millen, GA	2,827
Millersburg, OH	2,968
Millersburg, PA	4,540
Millinocket, ME	3,976
Millsboro, DE	9,395
Millsboro, PA	3,728
Millstadt, IL	3,583
Milton, DE	2,556
Milton, VT	8,521
Milton—Lewisburg, PA	30,806
Minden, LA	13,338
Minden, NE	2,891
Mineola, TX	5,608
Mineral Wells, TX	16,109
Minerva, OH	4,579
Minot AFB, ND	5,521
Minot, ND	42,650
Missouri Valley, IA	2,819
Mitchell, IN	4,193
Mitchell, SD	14,955
Moab, UT	6,883
Moapa Valley, NV	5,907
Moberly, MO	13,933
Mobridge, SD	3,457
Mocksville, NC	5,191
Mojave, CA	3,236
Molalla, OR	8,752
Momence, IL	3,777
Monahans, TX	7,686
Monett, MO	8,470
Monmouth, IL	9,654
Monmouth—Independence, OR	18,167
Monroe, GA	15,854
Monroe, WI	10,883
Monroeville, AL	4,834
Mont Belvieu, TX	3,094
Montauk, NY	2,719
Monte Vista, CO	4,489
Monterey, TN	3,010
Montesano—Elma, WA	8,522
Montevideo, MN	5,338
Montezuma, GA	6,900
Montgomery City, MO	2,629
Montgomery, MN	2,586
Montgomery, PA	6,453
Montgomery, WV	4,689
Monticello, AR	9,505
Monticello, GA	2,535
Monticello, IA	3,180
Monticello, IL	5,410
Monticello, IN	8,634
Monticello, KY	6,716
Monticello, NY	7,868
Monticello—Big Lake, MN	25,536
Montpelier, OH	3,929
Montrose, CO	22,706
Montrose, MN	4,470
Moodus, CT	2,701
Moore Haven, FL	3,205
Moorefield, WV	2,732
Moorhead, MS	2,567
Moose Lake, MN	3,080
Mora, MN	3,670
Morehead City, NC	44,798
Morehead, KY	7,282
Morgan City, LA	32,022
Morgan, UT	3,518
Morganfield, KY	5,210
Morrilton, AR	6,272
Morris, IL	15,668
Morris, MN	5,123
Morrison, IL	4,139
Morro Bay—Los Osos, CA	26,772
Morton, MS	2,979
Moscow, ID	24,212
Moscow, PA	2,811
Moses Lake, WA	32,978
Moulton, AL	2,919
Moultrie, GA	18,677
Moundville, AL	2,578
Mount Airy, NC—VA	19,457
Mount Angel, OR	3,568
Mount Carmel, IL	7,300
Mount Gilead, OH	3,884
Mount Holly Springs, PA	4,416
Mount Hood Village, OR	3,638
Mount Horeb, WI	6,997
Mount Morris, IL	3,457
Mount Morris, NY	4,028
Mount Olive, NC	5,196
Mount Orab, OH	3,030
Mount Pleasant, IA	8,636
Mount Pleasant, MI	37,447
Mount Pleasant, TN	3,507
Mount Pleasant, TX	15,987
Mount Pleasant, UT	3,207
Mount Pocono—Emerald Lakes, PA	24,216
Mount Shasta—Weed, CA	7,746
Mount Sterling, IL	4,088
Mount Sterling, KY	10,835
Mount Union, PA	3,859
Mount Vernon, IA	6,455
Mount Vernon, IL	16,008
Mount Vernon, IN	7,011
Mount Vernon, KY	2,626
Mount Vernon, MO	4,559
Mount Vernon, OH	22,153
Mount Vernon, TX	2,585
Mountain City, TN	2,698
Mountain Grove, MO	4,603
Mountain Home AFB, ID	3,238
Mountain Home, AR	14,180

Urban cluster	Population
Mountain Home, ID	16,531
Mountain House, CA	9,616
Mountain Lake Park, MD	4,720
Mukwonago, WI	20,255
Muldrow—Roland, OK	5,841
Muleshoe, TX	5,105
Mullins, SC	5,512
Muncy, PA	9,495
Munising, MI	2,972
Murfreesboro, NC	2,786
Murphysboro, IL	9,661
Murray, KY	19,072
Muscatine, IA	25,342
Muskogee, OK	42,052
Mystic Island, NJ	22,217
Nacogdoches, TX	34,546
Nantucket, MA	8,250
Nanty-Glo, PA	3,918
Napoleon, OH	8,724
Nappanee, IN	6,937
Narrows, VA—WV	4,229
Nashville, AR	4,488
Nashville, GA	4,601
Nashville, IL	3,238
Nassau Village-Ratliff, FL	5,243
Natchez, MS—LA	28,199
Natchitoches, LA	19,763
Navasota, TX	8,273
Nebraska City, NE	7,066
Needles, CA—AZ	8,520
Needville, TX	2,844
Nelson, GA	4,091
Nelsonville, OH	6,359
Neodesha, KS	2,570
Neosho, MO	11,955
Nephi, UT	5,249
Nevada, IA	6,728
Nevada, MO	8,832
New Albany, MS	6,632
New Baden, IL	3,424
New Boston, TX	4,707
New Bremen—Minster, OH	7,431
New Carlisle, IN	3,662
New Castle, CO	5,449
New Castle, IN	22,816
New Castle, PA	41,907
New Concord, OH	2,949
New Cordell, OK	2,876
New Freedom—Shrewsbury, PA—MD	14,179
New Hampton, IA	3,292
New Lebanon, OH	4,078
New Lexington, OH	4,940
New London, MN	3,188
New London, WI	7,643
New Madrid, MO	3,214
New Martinsville, WV—OH	6,138
New Philadelphia—Dover, OH	46,366
New Prague, MN	7,850
New Richmond, OH	2,838
New Richmond, WI	8,275
New Roads, LA	7,947
New Tazewell, TN	4,598
New Ulm, MN	13,367
New Wilmington, PA	2,638
Newark, NY	13,799
Newaygo, MI	3,335
Newberg, OR	27,001
Newberry, MI	3,225
Newberry, SC	12,046
Newcastle, WY	3,277
Newcomerstown, OH	4,170
Newfane, NY	5,626
Newman, CA	10,223
Newport, AR	6,288
Newport, NH	3,142
Newport, OR	11,188
Newport, PA	2,657
Newport, TN	11,603
Newport, VT	4,004
Newport, WA—ID	2,619
Newton, IA	15,655
Newton, IL	2,923
Newton, KS	20,654
Newton, MS	2,810
Newton, NJ	11,941
Nicholasville, KY	28,058
Nine Mile Falls, WA	4,086
Nipomo, CA	15,882
Nocona, TX	2,953
Nogales, AZ	32,044
Nokomis, IL	3,357
Nome, AK	3,222
Norfolk, NE	26,769
Norris, TN	3,005
North Adams, MA—VT	18,470
North Baltimore, OH	3,474
North Branch, MN	6,447
North Brookfield, MA	7,194
North Conway, NH	4,685
North Eagle Butte, SD	2,645
North East, PA	6,456
North Manchester, IN	6,031
North Platte, NE	25,213
North Shore, CA	3,012
North Vernon, IN	11,354
North Webster, IN	3,662
North Wilkesboro—Wilkesboro, NC	18,264
Northern Cambria, PA	6,544
Northfield, MN	21,535
Northfield, VT	4,250
Norton, KS	2,893
Norton—Wise, VA	10,510
Norwalk, OH	20,806
Norwich, NY	8,265
Norwood Young America, MN	3,486
Nowata, OK	3,632
Nyssa, OR	3,475
Oak Harbor, OH	2,794
Oak Harbor, WA	33,004
Oak Island, NC	11,226
Oakdale, LA	7,878
Oakhurst, CA	2,913
Oakland City, IN	2,515
Oakland, TN	7,057
Oakridge, OR	3,214
Oberlin, OH	7,966
Ocala Estates, FL	2,939
Ocean Park, WA	3,288
Ocean Pines, MD—DE	33,105
Ocean Shores, WA	5,218
Ocean View, DE	12,342
Oceana, WV	2,645
Ocilla, GA	3,366
Oconto Falls, WI	2,621
Oconto, WI	4,273
Odem, TX	2,775
Odessa, MO	5,199
Oelwein, IA	6,994
Ogallala, NE	4,424
Ogdensburg, NY	11,344
Oil City, PA	15,296
Okeechobee—Taylor Creek, FL	25,378
Okemah, OK	3,152
Okmulgee, OK	14,053
Olean, NY	22,324
Olney, IL	9,177
Olney, TX	3,282
Omak, WA	8,229
Omro, WI	3,358
Onalaska, TX	5,016
Onawa, IA	2,662
Oneida, NY	21,784
Oneida, TN	4,322
O'Neill, NE	3,682
Oneonta, AL	5,374
Oneonta, NY	17,229
Ontario, OR—ID	25,539
Oostburg, WI	2,724
Opelousas, LA	25,534
Opp, AL	4,806
Orange City, IA	6,842
Orange Cove, CA	9,774
Orange, VA	4,902
Orangeburg, SC	33,506
Orangetree, FL	7,624
Oregon, IL	3,813
Oregon, WI	11,059
Orland, CA	9,282
Orofino, ID	3,626
Orosi, CA	15,150
Oroville, CA	37,122
Orrville, OH	8,563
Orwigsburg, PA	5,645
Osage Beach, MO	3,706
Osage City, KS	2,683
Osage, IA	3,535
Osawatomie, KS	4,365
Osburn, ID	2,521
Osceola, AR	8,280
Osceola, IA	4,819
Osceola, WI	3,593
Oskaloosa, IA	12,545
Ossian, IN	3,711
Oswego, NY	39,385
Othello, WA	11,207
Otisville, NY	4,207
Otsego—Plainwell, MI	11,740
Ottawa, IL	20,612
Ottawa, KS	12,450
Ottawa, OH	5,270
Ottumwa, IA	24,771
Owatonna, MN	25,394
Owego, NY	5,071
Owensville, MO	2,912
Owosso, MI	22,426
Oxford, MS	25,768
Oxford, NC	9,174
Oxford, OH	21,376
Ozark, AL	12,066
Ozark, AR	3,153
Ozona, TX	2,873
Pacific, MO	10,327
Paden City, WV	2,682
Paducah, KY—IL	48,791
Page, AZ	6,665
Pageland, SC	4,100
Pagosa Springs, CO	4,909
Pahokee, FL	7,179
Pahrump, NV	28,446
Paintsville, KY	6,027
Palacios, TX	4,591
Palatka, FL	23,982
Palestine, TX	19,254
Palmyra, MO	3,577
Palmyra, NY	5,214
Paloma Creek South—Paloma Creek, TX	5,234
Pampa, TX	18,166
Pana, IL	5,943
Panama City Northeast, FL	5,817

Urban cluster	Population
Paola, KS	5,399
Paoli, IN	3,282
Paradise, CA	34,725
Paragould, AR	24,620
Paris, AR	3,143
Paris, IL	8,953
Paris, KY	11,042
Paris, TN	10,642
Paris, TX	26,349
Park City, UT	13,352
Park Rapids, MN	3,398
Parker, AZ—CA	4,768
Parlier, CA	14,490
Parowan, UT	2,551
Parsons, KS	10,298
Patterson, CA	20,781
Patton, PA	2,798
Paulding, OH	3,550
Pauls Valley, OK	5,835
Paw Paw Lake—Hartford, MI	11,589
Paw Paw, MI	8,684
Pawhuska, OK	3,623
Pawleys Island, SC	11,532
Pawnee, IL	2,869
Paxton, IL	4,916
Payson, AZ	14,210
Peaceful Valley, WA	3,025
Pearisburg, VA	2,884
Pearsall, TX	9,460
Pecan Acres, TX	5,269
Pecan Plantation, TX	6,366
Pecos, TX	11,785
Pelham, GA	3,750
Pell City, AL	11,096
Pella, IA	9,745
Pembroke, NC	7,436
Pendleton, OR	17,216
Penn Yan, NY	6,777
Peotone, IL	4,172
Perham, MN	2,929
Perry, FL	6,933
Perry, IA	7,628
Perry, MI	4,290
Perry, NY	3,688
Perry, OK	5,052
Perryton, TX	8,801
Perryville, MO	8,419
Peru, IN	13,095
Peru—LaSalle, IL	32,048
Peshtigo, WI	3,441
Peterborough, NH	3,165
Petersburg, IL	3,088
Petersburg, WV	2,545
Petoskey, MI	8,210
Phelan, CA	6,629
Philadelphia, MS	7,759
Philippi, WV	2,700
Philipsburg, PA	10,015
Phillipsburg, KS	2,609
Picayune, MS	16,792
Picture Rocks, AZ	4,345
Piedmont, AL	3,666
Pierre Part, LA	3,829
Pierre, SD	14,425
Piggott, AR	3,437
Pikeville, KY	7,936
Pilot Point, TX	3,579
Pinckneyville, IL	5,670
Pine City, MN	3,032
Pine Grove, PA	3,462
Pine Island, MN	2,945
Pine Ridge, SD	2,720
Pinehurst—Southern Pines, NC	36,272
Pipestone, MN	4,098
Piqua, OH	21,104
Pittsboro, NC	3,410
Pittsburg, KS	22,918
Pittsburg, TX	4,777
Pittsfield, IL	4,550
Pittsfield, ME	2,523
Placerville—Diamond Springs, CA	29,700
Plain City, OH	4,223
Plainview, MN	3,329
Plainview, TX	25,810
Planada, CA	4,523
Platte City, MO	8,958
Platteville, WI	11,236
Plattsburgh, NY	29,438
Plattsmouth, NE	6,596
Pleasant Hill, MO	8,049
Pleasant View, TN	3,730
Pleasanton, TX	12,468
Plumas Lake, CA	5,252
Plymouth, IN	12,498
Plymouth, NC	4,265
Plymouth, NH	4,959
Plymouth, WI	8,799
Pocahontas, AR	5,854
Pocomoke City, MD	4,329
Pocono Woodland Lakes, PA	7,020
Poinciana Southwest, FL	5,501
Poinciana, FL	41,922
Point Pleasant—Gallipolis, OH—WV	11,217
Pojoaque, NM	4,733
Polk City, IA	3,122
Polson, MT	4,763
Ponca City, OK	26,047
Pontiac, IL	12,323
Pontotoc, MS	4,807
Poolesville, MD	4,620
Poplar Bluff, MO	20,463
Poplar, MT	2,743
Poplar-Cotton Center, CA	3,158
Port Angeles, WA	22,863
Port Barre, LA	2,570
Port Clinton, OH	13,349
Port Hadlock-Irondale, WA	4,305
Port Isabel—Laguna Heights, TX	14,950
Port Jervis, NY—PA	16,787
Port Lavaca, TX	11,817
Port St. Joe, FL	3,635
Port Townsend, WA	8,400
Portage, PA	7,247
Portage, WI	10,391
Portageville, MO	3,151
Portales, NM	12,610
Portland, IN	6,006
Portland, MI	5,020
Portland, TN—KY	10,869
Portola, CA	2,523
Portsmouth, OH—KY	36,232
Post, TX	5,018
Poteau, OK	7,791
Poteet, TX	3,199
Potosi, MO	4,919
Potsdam, NY	9,310
Pottsville, PA	43,247
Powell, WY	6,389
Prairie du Chien, WI—IA	6,872
Prairie du Sac—Sauk City, WI	7,733
Prairie Grove, AR	3,213
Prairie View, TX	5,569
Pratt, KS	6,546
Premont, TX	2,620
Prescott, AR	2,773
Prescott, WI	4,152
Presidential Lakes Estates, NJ	3,015
Presidio, TX	4,654
Presque Isle, ME	6,081
Preston, ID	4,323
Prestonsburg, KY	5,965
Price, UT	14,187
Priceville, AL	3,006
Prince Frederick, MD	6,357
Princess Anne, MD	10,396
Princeton, IL	8,043
Princeton, IN	8,645
Princeton, KY	5,890
Princeton, MN	4,942
Princeville, HI	2,653
Prineville, OR	10,905
Provincetown, MA	3,152
Pryor Creek, OK	9,325
Pukalani—Makawao—Haiku-Pauwela, HI	26,128
Pulaski, TN	7,741
Pulaski, VA	16,066
Pulaski, WI	3,363
Pullman, WA	29,729
Punxsutawney, PA	6,394
Purcell, OK	6,877
Purcellville, VA	11,951
Quarryville, PA	7,233
Quartzsite, AZ	3,342
Quincy, FL	9,292
Quincy, IL	45,228
Quincy, WA	6,986
Quitman, GA	3,769
Quitman, TX	2,505
Rainbow Lakes Estates, FL	5,155
Ramona, CA	25,913
Ramseur, NC	2,951
Rancho Calaveras—Valley Springs, CA	7,457
Rancho Murieta, CA	5,376
Rantoul, IL	14,071
Rathdrum, ID	6,539
Raton, NM	6,551
Ravena, NY	5,358
Ravenswood, WV	4,150
Rawlins, WY	9,272
Raymond, MS	3,178
Raymond, WA	4,082
Raymondville, TX	14,481
Rayne, LA	9,385
Rayville, LA	4,267
Red Bluff, CA	18,434
Red Bud, IL	3,695
Red Hook, NY	6,661
Red Oak, IA	5,597
Red Springs, NC	4,185
Red Wing, MN	14,367
Redmond, OR	27,685
Redwood Falls, MN	4,958
Reedley—Dinuba, CA	46,247
Reedsburg, WI	9,190
Reedsport, OR	4,487
Refugio, TX	2,903
Reidsville, GA	4,945
Reidsville, NC	14,067
Rensselaer, IN	6,048
Rexburg, ID	26,852
Reynoldsville, PA	2,839
Rhinebeck, NY	3,032
Rhinelander, WI	9,010
Rice Lake, WI	9,507
Richfield, UT	7,340
Richgrove, CA	2,867
Richland Center, WI	5,021

Urban cluster	Population
Richlands South, NC	5,278
Richlands, VA	9,588
Richmond, IN—OH	44,136
Richmond, KY	35,540
Richmond, MI	6,140
Richmond, MO	5,307
Ridge Manor, FL	2,971
Ridgecrest, CA	31,155
Ridgefield, WA	4,259
Ridgeland, SC	5,301
Ridgway, PA	4,410
Rifle, CO	10,479
Rigby, ID	8,729
Rincon, GA	12,111
Rio Bravo—El Cenizo, TX	8,067
Rio Dell, CA	4,079
Rio Grande City—Roma, TX	46,344
Rio Hondo, TX	4,423
Rio Rico Northeast, AZ	2,628
Rio Vista, CA	7,097
Ripley, MS	3,592
Ripley, TN	8,763
Ripley, WV	4,193
Ripon, WI	7,930
River Falls, WI	15,351
Riverdale, CA	2,823
Riverton, WY	12,265
Roanoke Rapids, NC	24,450
Roanoke, AL	4,275
Roaring Spring, PA	7,130
Robertsdale, AL	7,601
Robinson, IL	7,894
Robstown, TX	11,991
Rochelle, IL	11,342
Rochester, IN	7,309
Rock Springs, WY	26,352
Rock Valley, IA	3,052
Rockdale, TX	5,459
Rockford, MN	4,618
Rockingham—Hamlet, NC	25,404
Rockland, ME	8,775
Rockmart, GA	7,646
Rockport, TX	16,322
Rockville, IN	4,339
Rocky Ford, CO	4,161
Rocky Mount, VA	6,048
Rogers City, MI	2,560
Rogersville, MO	2,878
Rogersville, TN	6,444
Rolla, MO	20,160
Romancoke, MD	3,538
Rome, NY	33,428
Roosevelt, UT	5,915
Rosamond, CA	16,000
Rose Hill, KS	3,650
Roseau, MN	2,763
Roseburg, OR	41,700
Roswell, NM	49,727
Roxboro, NC	9,660
Roxborough Park, CO	8,503
Royston, GA	3,002
Ruckersville, VA	5,785
Rugby, ND	2,824
Ruidoso, NM	9,596
Ruleville, MS	2,998
Rumford, ME	4,987
Running Springs, CA	4,811
Rupert, ID	6,346
Rush City, MN	2,883
Rushville, IL	3,196
Rushville, IN	6,738
Rusk, TX	4,691
Russell, KS	4,108
Russells Point, OH	6,523
Russellville, AL	9,866
Russellville, AR	32,733
Russellville, KY	6,714
Ruston, LA	27,724
Rutland, VT	19,840
Sabetha, KS	2,526
Sabina, OH	2,512
Safford, AZ	19,151
Sahuarita—Green Valley, AZ	40,691
Salamanca, NY	5,738
Salem, IL	8,300
Salem, IN	6,544
Salem, MO	4,921
Salem, NJ	5,724
Salem, OH	18,617
Salida, CO	6,663
Salina, KS	47,493
Sallisaw, OK	8,179
Salmon, ID	3,084
Saltillo, MS	4,303
Saluda, SC	3,528
San Carlos, AZ	3,993
San Diego, TX	4,757
San Joaquin, CA	3,983
San Jose (Tinian Municipality), MP	2,794
San Luis, AZ	24,091
San Manuel, AZ	3,185
San Saba, TX	3,105
Sandersville, GA	7,288
Sandpoint, ID	10,840
Sandusky, MI	2,775
Sandusky, OH	48,990
Sandy, OR	9,954
Sanford, ME	13,584
Sanford, NC	33,120
Sanger, CA	26,604
Sanger, TX	5,972
Santa Isabel, PR	10,550
Santa Paula, CA	29,742
Santa Rosa Beach, FL	4,512
Santa Rosa, NM	2,621
Santaquin, UT	9,936
Santo Domingo Pueblo, NM	2,567
Saranac Lake, NY	7,698
Sauk Centre, MN	4,253
Sault Ste. Marie, MI	13,114
Savanna, IL—IA	3,362
Savannah, MO	5,138
Savannah, TN	8,347
Saw Creek, PA	5,880
Sayre, OK	4,041
Sayre—Waverly, PA—NY	17,991
Schulenburg, TX	2,726
Schuyler, NE	6,255
Scott City, KS	3,647
Scott City, MO	5,216
Scottsbluff, NE	25,946
Scottsboro, AL	10,069
Scottsburg, IN	11,434
Scottsville, KY	4,251
Sealy, TX	5,562
Searcy, AR	25,979
Seaside, OR	8,489
Sedalia, MO	26,178
Sedona, AZ	6,761
Seguin, TX	24,122
Selma, AL	23,821
Selma, CA	41,810
Selmer, TN	3,840
Seminole, OK	5,931
Seminole, TX	6,477
Senatobia, MS	6,531
Seneca, SC	26,054
Sequim, WA	19,286
Seven Lakes, NC	3,757
Severance, CO	2,670
Sevierville, TN	22,108
Seville, OH	7,396
Seward, NE	6,636
Seymour (Outagamie County), WI	3,500
Seymour, IN	20,695
Shady Cove, OR	3,379
Shady Side—Deale, MD	10,784
Shafter, CA	18,098
Shallowater, TX	3,229
Shamokin—Mount Carmel, PA	30,185
Shannondale, WV	2,577
Shawano, WI	10,527
Shawnee, OK	34,255
Shelby, MT	3,037
Shelby, NC	27,374
Shelby, OH	9,305
Shelbyville, IL	4,974
Shelbyville, IN	20,795
Shelbyville, KY	20,621
Shelbyville, TN	20,005
Sheldon, IA	4,887
Shelley, ID	4,701
Shelton, WA	18,705
Shenandoah, IA	5,203
Shenandoah—Mahanoy City—Frackville, PA	19,009
Shepherdstown, WV—MD	4,856
Sheridan, AR	4,458
Sheridan, IN	2,745
Sheridan, OR	8,468
Sheridan, WY	18,786
Shippensburg, PA	17,008
Shiprock, NM	6,669
Shorewood Forest, IN	3,079
Show Low, AZ	10,409
Sibley, IA	2,690
Sidney, MT	5,438
Sidney, NE	6,373
Sidney, NY	5,565
Sidney, OH	21,956
Sierra View—Indian Mountain Lake, PA	28,347
Sikeston, MO	16,536
Siler City, NC	9,076
Siloam Springs, AR—OK	19,326
Silsbee, TX	9,531
Silt, CO	2,966
Silver City, NM	12,705
Silver Creek, NY	3,799
Silver Lakes, CA	5,394
Silverthorne—Frisco, CO	15,351
Silverton, OR	9,614
Sinton, TX	6,071
Sioux Center, IA	6,649
Sissonville, WV	2,888
Sitka, AK	7,027
Skaneateles, NY	3,524
Skiatook, OK	6,768
Skowhegan, ME	4,751
Slaton, TX	5,938
Sleepy Eye, MN	3,479
Slippery Rock, PA	6,716
Smithfield, NC	27,155
Smithfield, VA	10,215
Smithton, IL	3,720
Smithville North, MO	2,751
Smithville, TN	4,050
Smithville, TX	3,750
Sneads Ferry, NC	3,899
Snoqualmie, WA	20,592

Urban cluster	Population
Snowflake, AZ	6,279
Snyder, TX	11,557
Social Circle, GA	3,328
Socorro, NM	8,991
Soda Springs, ID	2,793
Sodus, NY	2,865
Soldotna, AK	6,526
Soledad, CA	25,943
Solvang—Buellton—Santa Ynez, CA	14,862
Somerset, KY	29,042
Somerset, MI	2,910
Somerset, PA	12,583
Somerset, WI	2,604
Somerton, AZ	16,988
Sonoma, CA	32,678
Sonora, TX	3,352
Sonora—Jamestown—Phoenix Lake, CA	28,255
Soperton, GA	2,832
South Boston, VA	8,306
South Deerfield, MA	5,028
South Fallsburg, NY	3,388
South Haven, MI	5,791
South Hill, VA	4,834
South Lake Tahoe, CA—NV	29,107
South Paris, ME	4,780
South Pittsburg, TN—AL	5,373
South Vacherie, LA	2,621
Southold, NY	9,810
Sparta, GA	3,622
Sparta, IL	4,046
Sparta, MI	4,041
Sparta, TN	5,449
Sparta, WI	9,907
Spearfish, SD	11,459
Spearman, TX	3,349
Spencer, IA	10,952
Spencer, WV	2,986
Spirit Lake, IA	10,826
Spooner, WI	2,673
Spout Springs, NC	14,488
Spring Creek North, NV	3,286
Spring Creek South, NV	3,862
Spring Hill, KS	5,452
Spring Hill, TN	31,208
Springfield, GA	3,649
Springfield, TN	17,357
Springfield, VT	4,872
Springhill, LA	6,012
Springs, NY	12,604
Springtown, TX	2,623
Springville, AL	2,775
Springville, NY	3,897
Spruce Pine, NC	4,700
St. Albans, VT	9,054
St. Anthony, ID	3,702
St. Charles, MN	2,977
St. Clair, MO	5,971
St. Francis, MN	6,212
St. Helena, CA	6,727
St. Helens, OR	25,650
St. Ignace, MI	2,531
St. James, MN	4,585
St. James, MO	4,123
St. James, NC	2,604
St. Johns, AZ	2,550
St. Johns, MI	8,425
St. Johnsbury, VT	5,073
St. Joseph, IL	5,047
St. Maries, ID	2,608
St. Martinville, LA	7,220
St. Marys, KS	2,669
St. Marys, OH	9,373
St. Marys, PA	9,585
St. Marys, WV—OH	4,315
St. Marys—Kingsland, GA	34,630
St. Pauls, NC	3,288
St. Peter, MN	11,634
St. Simons, GA	12,226
Stafford Springs, CT	5,581
Stamford, TX	3,000
Stanford, KY	4,183
Stanley, WI	3,447
Stansbury Park, UT	9,061
Stanton, KY	4,149
Stanwood, WA	6,289
Staples, MN	2,791
Star, ID	5,751
Starke, FL	5,676
Starkville, MS	30,307
Statesboro, GA	36,314
Staunton, IL	6,134
Stayton, OR	10,291
Ste. Genevieve, MO	4,329
Steamboat Springs, CO	12,888
Steeleville, IL	3,469
Stephenville, TX	16,796
Sterling, CO	16,088
Sterling, IL	28,827
Stevens Point, WI	44,223
Stewartstown, PA	4,663
Stewartville, MN	5,877
Stigler, OK	2,843
Stillwater, OK	44,515
Stilwell, OK	3,789
Storm Lake, IA	11,364
Story City, IA	3,311
Strasburg, VA	7,015
Strawberry Plains, TN	3,906
Streator, IL	17,797
Stuarts Draft, VA	8,168
Sturgeon Bay, WI	8,617
Sturgis, MI	13,040
Sturgis, SD	6,583
Stuttgart, AR	9,233
Sugarmill Woods, FL	8,816
Sullivan City, TX	5,694
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Tabor City, NC—SC	3,834
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Taylorville, IL	13,742
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Thermopolis, WY	3,297
Thief River Falls, MN	8,883
Thomaston, GA	14,416
Thomasville, AL	3,285
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Thomson, GA	8,540
Three Rivers, MI	10,820
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Tonkawa, OK	3,141
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Toppenish, WA	14,512
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Torrington, CT	42,754
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Towanda, PA	4,588
Traverse City, MI	47,109
Treasure Lake, PA	2,982
Tremonton, UT	9,890
Trenton, FL	2,724
Trenton, GA	2,850
Trenton, IL	2,736
Trenton, MO	5,596
Trenton, TN	3,852
Tri-City—Myrtle Creek, OR	8,492
Trinidad, CO	9,181
Trinity, TX	3,320
Troy, AL	15,897
Troy, MO	13,231
Troy, NC	3,618
Truckee, CA	12,139
Trumann, AR	7,095
Truth or Consequences, NM	7,918

Urban cluster	Population
Tuba City, AZ	8,858
Tucumcari, NM	5,283
Tularosa, NM	2,735
Tulia, TX	4,903
Tullahoma, TN	17,250
Tunica, MS	3,662
Tunkhannock, PA	3,426
Tupelo, MS	40,995
Tupper Lake, NY	4,204
Tuscola, IL	4,791
Tuskegee, AL	9,536
Tuttle, OK	2,517
Twentynine Palms Base, CA	8,384
Twentynine Palms, CA	12,895
Twin Falls, ID	48,836
Twin Lakes, VA	3,191
Two Harbors, MN	3,588
Tybee Island, GA	3,202
Tyrone, PA	7,622
Ukiah, CA	29,709
Ulysses, KS	6,279
Unadilla, GA	3,406
Union City, IN—OH	5,443
Union City, PA	3,381
Union City, TN	10,303
Union Grove, WI	6,973
Union Springs, AL	5,307
Union, MO	8,658
Union, SC	10,033
Upland, IN	3,343
Upper Greenwood Lake, NJ	3,879
Upper Sandusky, OH	6,055
Urbana, OH	11,699
Uvalde, TX	18,118
Vado, NM	4,497
Vail, AZ	9,164
Vail, CO	5,823
Valatie, NY	5,336
Valentine, NE	2,713
Valley City, ND	6,689
Valley—Lanett, AL—GA	20,760
Van Wert, OH	10,747
Van, TX	2,502
Vandalia, IL	7,309
Vandalia, MO	3,656
Vandenberg AFB, CA	3,047
Vassar, MI	3,714
Veneta, OR	5,979
Venus, TX	3,559
Vergennes, VT	2,592
Vermillion, SD	10,492
Vernal, UT	17,321
Vernon, TX	10,572
Versailles, KY	15,907
Versailles, OH	3,295
Vicksburg, MS—LA	29,022
Vidalia, GA	13,442
Vienna, GA	3,506
Vieques (Vieques Municipio), PR	8,230
Village of Four Seasons, MO	4,451
Village of Oak Creek (Big Park), AZ	5,309
Ville Platte, LA	9,328
Vincennes, IN	21,302
Vineyard Haven, MA	10,082
Vinita, OK	6,002
Vinton, IA	5,044
Vinton, LA	2,752
Virden, IL	4,266
Virginia, MN	12,883
Viroqua, WI	4,097
Vistancia, AZ	6,615
Vivian, LA	2,980
Wabash, IN	10,418
Waconia, MN	10,748
Wadena, MN	3,927
Wadesboro, NC	5,791
Wagoner, OK	8,043
Wahoo, NE	4,450
Wahpeton, ND—MN	11,113
Waikoloa Village, HI	4,089
Waimea (Hawaii County), HI	6,960
Walden, NY	11,565
Waldport, OR	3,434
Waldron, AR	3,330
Walkerton, IN	3,035
Wallace, NC	4,345
Walnut Ridge, AR	6,346
Walsenburg, CO	2,943
Walterboro, SC	9,502
Walters, OK	2,506
Walton, NY	3,067
Walworth, NY	3,089
Walworth, WI	4,383
Wamego, KS	4,418
Wapakoneta, OH	10,684
Wapato, WA	7,607
Warden, WA	2,679
Ware, MA	9,146
Warren, AR	5,801
Warren, PA	15,420
Warrensburg, MO	20,677
Warrensburg, NY	2,648
Warrenton, MO	9,079
Warsaw, IN	30,166
Warsaw, MO	2,565
Warsaw, NC	3,045
Warsaw, NY	3,017
Warwick, NY	12,080
Wasco, CA	25,489
Waseca, MN	9,537
Washington Court House, OH	15,168
Washington, GA	3,457
Washington, IA	6,628
Washington, IN	12,462
Washington, MO	14,316
Washington, NC	16,429
Washington, NJ	15,385
Washoe Valley, NV	2,645
Watchtower, NY	3,936
Water Valley, MS	2,622
Waterbury, VT	2,971
Waterford, CA	9,104
Waterloo, IL	9,604
Waterloo, WI	3,059
Watertown, MN	4,185
Watertown, SD	21,111
Watertown, WI	23,347
Waterville, ME	25,689
Watkins Glen, NY	3,457
Watonga, OK	5,084
Watseka, IL	5,055
Wauchula, FL	14,621
Waukon, IA	3,731
Waupaca, WI	7,755
Waupun, WI	11,373
Wauseon, OH	7,193
Wautoma, WI	2,573
Waverly City, OH	7,396
Waverly, IA	8,621
Waverly, NE	3,133
Waverly, TN	3,246
Waycross, GA	25,723
Wayland, MI	4,518
Wayne, NE	5,557
Waynesboro, GA	5,830
Waynesboro, MS	4,224
Waynesboro, PA—MD	25,912
Waynesburg, PA	8,665
Weatherford, OK	10,713
Weatherford, TX	34,824
Webster City, IA	7,761
Wedgefield, FL	4,505
Weedsport, NY	3,112
Weiser, ID—OR	5,659
Welch, WV	3,098
Wellington, CO	6,224
Wellington, KS	7,783
Wellington, OH	4,845
Wellsville, NY	6,084
Welsh, LA	2,631
Wendell, ID	2,756
Wendell—Zebulon, NC	13,209
West Columbia, TX	4,976
West Frankfort, IL	8,954
West Jefferson, OH	4,572
West Lafayette, OH	2,534
West Liberty, IA	3,690
West Plains, MO	11,242
West Point, MS	9,173
West Point, NE	3,180
West Point, NY	12,141
West Point, VA	2,675
West Tawakoni, TX	7,606
West Union, OH	3,133
West Wendover, NV—UT	5,365
West, TX	2,780
Westernport, MD—WV	5,831
Westfield, NY	3,015
Weston Lakes, TX	2,928
Weston, WV	5,077
Westville, IN	5,931
Wetumpka, AL	6,659
Wewoka, OK	3,071
Weyers Cave, VA	2,522
Wharton, TX	8,964
Wheatland, CA	3,434
Wheatland, WY	3,584
Whispering Pines, NC	3,514
White Hall, IL	4,048
White Pine, TN	3,061
White Rock, NM	5,039
White Sulphur Springs, WV	2,674
Whitefish, MT	6,300
Whitehall, MI	10,568
Whiteman AFB, MO	5,387
Whiteriver, AZ	6,188
Whitesboro, TX	3,959
Whiteville, NC	7,446
Whitewater, WI	14,227
Wickenburg, AZ	3,624
Wiggins, MS	3,768
Wilburton, OK	2,979
Willard, MO	5,531
Willard, OH	6,309
Willcox, AZ	3,671
Williams, AZ	2,639
Williams, CA	5,181
Williamsburg, IA	2,914
Williamsburg, KY	5,969
Williamson, WV—KY	3,425
Williamston, MI	6,317
Williamston, NC	5,361
Williamstown, KY	4,491
Williamstown, PA	4,596
Willimantic, CT	29,669
Williston, FL	3,244
Williston, ND	15,127
Willits, CA	8,053
Willmar, MN	20,244
Willows, CA	7,346

Urban cluster	Population
Wills Point, TX	3,320
Wilmington, OH	12,374
Wilmore, KY	5,508
Wilson, NC	49,190
Wilton, IA	2,791
Winamac, IN	2,554
Winchester, IN	4,978
Winchester, KY	25,831
Winchester, TN	11,681
Winder, GA	37,831
Windom, MN	4,409
Window Rock, AZ—NM	3,510
Windsor, MO	2,577
Windsor, NC	3,566
Windsor, VT—NH	2,704
Winfield, KS	12,029
Winneconne, WI	3,654
Winnemucca, NV	10,268
Winner, SD	2,907
Winnfield, LA	5,376
Winnie, TX	3,901
Winnsboro, LA	5,361
Winnsboro, SC	5,141
Winnsboro, TX	3,403
Winona, MN	30,712
Winona, MS	4,388
Winslow, AZ	9,765
Winters, CA	7,082
Winters, TX	2,516
Winterset, IA	5,043
Wisconsin Rapids, WI	29,169
Wolf Point, MT	3,540
Wonder Lake, IL	4,533
Woodburn, OR	32,943
Woodbury, TN	2,604
Woodcreek, TX	5,032
Woodlake, CA	7,465
Woodland Park, CO	10,528
Woodland, WA	5,863
Woodruff, SC	4,298
Woodstock, AL	3,664
Woodstock, IL	25,308
Woodstock, VA	7,017
Woodstown, NJ	4,195
Woodville, FL	5,427
Woodville, TX	4,760
Woodward, OK	11,344
Wooster, OH	30,430
Worland, WY	5,465
World Golf Village, FL	6,622
Worthington, MN	12,616
Wright City, MO	2,938
Wrightstown, WI	2,524
Wrightsville, GA	3,452
Wrightwood, CA	4,096
Wurtsboro, NY	4,179
Wynne, AR	7,722
Wytheville, VA	7,212
Yadkinville, NC	3,530
Yankton, SD	14,637
Yazoo City, MS	15,546
Yellow Springs, OH	3,589
Yelm, WA	12,387
Yerington, NV	2,911
Yoakum, TX	5,624
York, NE	7,633
York, SC	7,931
Yorkville, GA	3,289
Youngsville, PA	2,921
Yountville, CA	2,933
Yreka, CA	7,598
Yucca Valley, CA	23,805
Yulee, FL	7,534
Yuma, CO	3,524
Zanesville, OH	42,132
Zapata—Medina, TX	10,719
Zimmerman, MN	8,110
Zumbrota, MN	3,161
Zuni Pueblo, NM	6,744

C. Geographic Products

TIGER/Line® Shapefiles that contain the boundaries, names, and codes of urbanized areas and urban clusters will be available from the Census Bureau's TIGER/Line® Shapefiles and TIGER/Line® Files Web page at: *http://www.census.gov/geo/www/tiger/shp.html*. Maps produced by the Census Bureau, showing the boundaries and component geographic entities of urbanized areas and urban clusters will be available in mid-2012. For information updates concerning the availability of maps, data users should monitor the Census Bureau's Urban and Rural Classification and Urban Area Criteria Web page at: *http://www.census.gov/geo/www/ua/2010urbanruralclass.html*.

Dated: March 16, 2012.

Robert M. Groves,

Director, Bureau of the Census.

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S. 1134/P.L. 112–100
St. Croix River Crossing Project Authorization Act (Mar. 14, 2012; 126 Stat. 268)

S. 1710/P.L. 112–101
To designate the United States courthouse located at 222 West 7th Avenue, Anchorage, Alaska, as the James M. Fitzgerald United States Courthouse. (Mar. 14, 2012; 126 Stat. 270)

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