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WHEN: Tuesday, June 11, 2013
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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 JUSTICE

28 CFR Part 32

Public Safety Officers' Benefits Program

AGENCY: Office of Justice Programs, Justice.

ACTION: Final rule.

SUMMARY: This order will amend regulations to revise delegations of authority for the review process for determinations regarding claims for benefits under the Public Safety Officers' Benefits Program. The changes to the regulations are designed to increase efficiency, reduce duplication, and streamline the processing of claims.

DATES: This rule takes effect on May 20, 2013.

FOR FURTHER INFORMATION CONTACT: Hope Janke, Director, Public Safety Officers' Benefits Program, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street NW., Washington, DC 20531; telephone: (202) 307–2858.

SUPPLEMENTARY INFORMATION: The Public Safety Officers' Benefits (PSOB) program provides death benefits, disability benefits, and educational assistance benefits to eligible public safety officers or their families when a death or disability occurs in the line of duty. The program, authorized and established by the PSOB Act in 1976, was designed to offer peace of mind to men and women seeking careers as public safety officers and to make a strong statement about the value that the nation places on their commitment to serve their communities in potentially dangerous circumstances. The Office of Justice Programs and Bureau of Justice Assistance (BJA) are engaged in ongoing efforts to improve the performance of the PSOB program including an entirely paperless electronic case management system in order to improve the efficiency of claims processing. Additionally, BJA is ready to launch an effort to revise their claims process and streamline the documentation required of claimants. This rule represents one aspect of the streamlining efforts. Having the legal review function handled by the Department component authorized to administer the PSOB program will maintain that critical function while simplifying the claims administration process, eliminating duplicative efforts across components, and increasing overall programmatic efficiency.

Federal Rulemaking Requirements

A. Executive Order 12866 and 13563

This rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review. The Department of Justice has determined that this is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, and that it relates to a matter of agency organization, management, or personnel. *See* Executive Order 12866, 3(d)(3). Accordingly, this rule has not been reviewed by the Office of Management and Budget.

B. Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Attorney General has determined that this rule will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

C. Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

D. Administrative Procedure Act

This rule concerns matters relating to ''grants, benefits, or contracts,'' 5 U.S.C. 553(a)(2), and also relates to matters of agency management or personnel, and is therefore exempt from the usual requirements of prior notice and comment and a 30-day delay in the effective date. *See also* 5 U.S.C. 553(d).

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., does not apply because this rule is a rule of agency organization, procedure, and practice and therefore is not subject to notice-and-comment rulemaking requirements. *Id.* 553(b)(A).

F. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based companies in domestic and export markets.

G. Unfunded Mandates Reform Act of 1995

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

H. Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 28 CFR Part 32

Administrative practice and procedure, Claims, Disability benefits, Education, Emergency medical services, Firefighters, Law enforcement officers, Reporting and recordkeeping requirements, Rescue squad.

Accordingly, for the reasons set forth in the preamble, part 32 of title 28 of the Code of Federal Regulations is amended as follows:

PART 32—PUBLIC SAFETY OFFICERS' DEATH, DISABILITY, AND EDUCATIONAL ASSISTANCE BENEFIT CLAIMS

■ 1. The authority citation for part 32 continues to read as follows:

Authority: 42 U.S.C. ch. 46, subch. XII; 42 U.S.C. 3782(a), 3787, 3788, 3791(a), 3793(a)(4) &(b), 3795a, 3796c–1, 3796c–2; sec. 1601, title XI, Public Law 90–351, 82 Stat. 239; secs. 4 through 6, Public Law 94–430, 90 Stat. 1348; secs. 1 and 2, Public Law 107–37, 115 Stat. 219.

■ 2. In § 32.3, the definition for ''PSOB Office'' is revised to read as follows:

§ 32.3 Definitions.

* * * * *

PSOB Office means the unit of BJA that directly administers the Public Safety Officers' Benefits program.

* * * * *

§ 32.43 [Amended]

■ 3. In § 32.43, remove paragraph (e).

■ 4. In § 32.44, paragraph (a) is revised to read as follows:

§ 32.44 Hearing Officer determination.

(a) Upon his determining a claim, the Hearing Officer shall file a notice of the same simultaneously with the Director (for his review under subpart F of this part in the event of approval) and the PSOB Office, which notice shall specify the factual findings and legal conclusions that support it.

* * * * *

Dated: May 9, 2013.

Mary Lou Leary,

Acting Assistant Attorney General.

[FR Doc. 2013–11872 Filed 5–17–13; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[CFDA Number: 84.133B–7]

Final Priority; National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research Training Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for a Rehabilitation Research Training Center (RRTC) on Disability Statistics and Demographics under the Disability and Rehabilitation Research Projects and Centers program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use this priority for a competition in fiscal year (FY) 2013 and later years. We take this action to focus research attention on areas of national need. We intend to use this priority to improve outcomes for individuals with disabilities.

DATES: *Effective Date:* This priority is effective June 19, 2013.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This notice of final priority is in concert with NIDRR's Long-Range Plan for Fiscal Years 2013–2017 (Plan). The Plan, which was published in the **Federal Register** on April 4, 2013 (78 FR 20299), can be accessed on the Internet at the following site: *http://www.gpo.gov/fdsys/pkg/FR-2013-04-04/html/2013-07879.htm*.

Through the implementation of the Plan, NIDRR seeks to improve the health and functioning, employment, and community living and participation of individuals with disabilities through comprehensive programs of research, engineering, training, technical assistance, and knowledge translation and dissemination. The Plan reflects NIDRR's commitment to quality, relevance, and balance in its programs to ensure that appropriate attention is paid to all aspects of the well-being of individuals with disabilities and to all types and degrees of disability, including individuals with low incidence and severe disabilities.

This notice announces a priority that NIDRR intends to use for an RRTC competition in FY 2013 and possibly later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make an award for this priority. The decision to make an award will be based on the quality of applications received and available funding.

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technologies that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Research and Training Centers (RRTCs)

The purpose of the RRTCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to achieve the goals of, and improve the effectiveness of, services authorized under the Rehabilitation Act through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. These activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. Additional information on the RRTC program can be found at: *www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority (NPP) for this program in the **Federal Register** on February 21, 2013 (78 FR 12002). That notice contained background information and our reasons for proposing the priority.

Public Comment: In response to our invitation in the NPP, nine parties submitted comments on the proposed priority.

Generally, we do not address technical and other minor changes.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority since publication of the notice of proposed priority follows.

Comment: One set of commenters recommended that NIDRR include an additional requirement that the RRTC collect and analyze market-oriented information about the use of assistive and accessible technologies by individuals with disabilities. These commenters noted that such information would provide technology developers, service providers, and other stakeholders with information about the number of users of specific assistive technology products or the size of the potential market for specific technology accessibility features. The commenters suggested that the RRTC be required to collect and analyze data on the number

of individuals with disabilities who experience specific barriers to the use of assistive technologies and products and to generate new solutions to those barriers.

Discussion: This priority requires the applicant to propose and justify statistical research yielding important information about the status and well-being of individuals with disabilities. Under paragraph (a), applicants may choose to focus a portion of their data-quality improvement activities in the area of technology use, as suggested by the commenters. However, we do not want to limit the number and breadth of applications that are submitted by requiring all applicants to focus their activities on the collection and analysis of data about use of assistive and accessible technologies by individuals with disabilities. Furthermore, under the requirements in paragraph (b)(iii) of the priority, and to the extent that data on this topic are available, the RRTC may consult with stakeholders and provide specialized analyses if requested.

Changes: None.

Comment: Two commenters noted that the outcomes of individuals with disabilities are a function of the interaction between the individual and the physical, social, and economic environments in which he or she lives. These commenters remarked that disability statistics are typically collected and analyzed at the individual level and therefore do not reflect the role that the environment plays in producing outcomes. These commenters recommended that NIDRR modify the priority to require the RRTC to engage in research on improved measurement and collection of data about the environments in which individuals with disabilities live.

Discussion: NIDRR agrees with the commenters' broad point that outcomes are a function of the interaction between the individual with a disability and the environment in which he or she lives. We also agree that research is needed to improve the ability of the disability and rehabilitation research field to measure environmental barriers to optimal outcomes for individuals with disabilities. However, requiring the RRTC to engage in the specific research suggested by the commenters is beyond the intended scope of the RRTC funded under this priority. While nothing in the priority precludes applicants from analyzing and reporting on existing data about the environments in which people with disabilities live, or on the intersection between environments and individual characteristics that are associated with important outcomes, we do not want to limit the number and breadth of applications that are submitted under this priority by requiring all applicants to focus their activities on environmental measures.

Changes: None.

Comment: One commenter recommended that NIDRR modify the priority to require the RRTC focus on the following topics: (1) Household living arrangements of individuals with disabilities, (2) the experiences of individuals with disabilities as consumers of health care services, and (3) violence against individuals with disabilities.

Discussion: Under paragraph (a) of the priority, applicants may choose to focus a portion of their data-quality improvement activities in the areas suggested by the commenter. However, we do not want to limit the number and breadth of applications that are submitted under this priority by requiring all applicants to focus their research activities in these specific areas. In addition, the RRTC may consult with stakeholders and provide specialized analyses in these areas, under the requirements in paragraph (b)(iii) of the priority.

Changes: None.

Comment: One commenter recommended that NIDRR require the RRTC to provide disability statistics training and to guide trainees into employment related to the conduct of Federal surveys or into employment in disability policy areas where their statistics training can be well used.

Discussion: The training requirement in the opening paragraph of the priority is based directly on the Federal regulations that govern the administration of the RRTC program. Specifically, 34 CFR 350.22(b) requires RRTCs to provide training to rehabilitation personnel (so that they may provide services more effectively), and to rehabilitation research personnel (so that they may improve their capacity to conduct research). In accordance with the requirements in § 350.22(b), the RRTC funded under this priority will provide training in the area of disability statistics so that trainees will be better producers, or consumers, or both, of disability statistics. However, guiding training recipients into specific post-training professions or places of work is beyond the scope of this priority, the primary purpose of which is to advance research and training directed at improving the collection, analysis, and use of disability data.

Changes: None.

Final Priority

Rehabilitation Research and Training Center (RRTC) on Disability Statistics and Demographics

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for an RRTC on Disability Statistics and Demographics. This RRTC must conduct research, knowledge translation, training, dissemination, and technical assistance activities to advance the use and usefulness of disability statistics and demographic data to inform disability policy and the provision of services to individuals with disabilities. Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) National disability data and statistics that are of high quality and relevant to improving the lives of individuals with disabilities. The RRTC must contribute to this outcome by conducting analyses, providing recommendations, and optimizing methodologies for conducting surveys of individuals with disabilities, including sampling techniques, and methods for appropriately interviewing and collecting data from individuals with a wide range of disabilities.

(b) Timely analyses of high-quality, relevant disability and demographic statistics to inform the development of disability policies and programs. The RRTC must contribute to this outcome by:

(i) Producing secondary analyses of national, State, and administrative data that address critical program and service needs.

(ii) Evaluating progress with regard to national goals for individuals with disabilities and their families.

(iii) Providing statistical consultation, including specialized analyses, to facilitate the appropriate use of survey and administrative data by policymakers, advocates, individuals with disabilities, and other stakeholders.

(c) Improved access to disability statistics and demographic information. The RRTC must contribute to this outcome by:

(i) Serving as a resource on disability statistics and demographics for Federal and other government agencies, policymakers, consumers, advocates, researchers, and other interested parties.

(ii) Disseminating research findings in clear and useful formats to Federal and other government agencies, policymakers, consumers, advocates, researchers, and others to enhance planning, policymaking, program administration, and delivery of services to individuals with disabilities.

(iii) Developing and disseminating an annual report on disability in the United States that includes statistics on current status and trends related to the prevalence of disabilities, and employment, health, community living, and other outcomes of importance in monitoring the well-being of individuals with disabilities.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this final priority only upon a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this proposed priority is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years, as projects similar to the one envisioned by the final priority have been completed successfully. Establishing new RRTCs based on the final priority will generate new knowledge through research and development and improve the lives of individuals with disabilities. The new RRTCs will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to fully participate in their communities.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or TTY, call the FRS, toll free, at 1–800–877–8339.

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: May 15, 2013.

Michael K. Yudin,

Delegated the authority to perform the functions and the duties of the Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–11988 Filed 5–17–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[CFDA Number: 84.133B–9]

Final Priority; National Institute on Disability and Rehabilitation Research—Rehabilitation Research and Training Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, we announce a priority for a Rehabilitation Research and Training Center (RRTC) on Community Living and Participation for Individuals with Psychiatric Disabilities. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2013 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve outcomes among individuals with disabilities.

DATES: *Effective Date:* This priority is effective June 19, 2013.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: *Purpose of Program:* The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Research and Training Centers

The purpose of the RRTCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to achieve the goals of the Rehabilitation Act through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. These activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. Additional information on the RRTC program can be found at: *www.ed.gov/rschstat/research/pubs/resprogram.html#RRTC.*

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority in the **Federal Register** on February 28, 2013 (78 FR 13597). That notice contained background information and our reasons for proposing the particular priority.

There are differences between the notice of proposed priority and this notice of final priority as discussed under *Analysis of Comments and Changes.*

Public Comment: In response to our invitation in the notice of proposed priority, two parties submitted comments on the proposed priority. One of these commenters wrote in support of the priority, and one had a specific comment and recommendation.

Generally, we do not address technical and other minor changes or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the proposed priority.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority since publication of the proposed priority follows.

Comment: One commenter recommended that NIDRR require the RRTC to include individuals with disabilities in its target audience as it disseminates educational materials and research findings under paragraph (c)(iii) of the priority.

Discussion: NIDRR agrees that the RRTC must provide information to individuals with disabilities as part of its mission to serve as a national resource center on community living and participation for individuals with psychiatric disabilities. Paragraph (c)(i) of the priority requires the RRTC to provide information and technical assistance to individuals with psychiatric disabilities and their representatives. Paragraph (c)(iv) requires the RRTC to involve key stakeholders in the conduct of its research activities in order to maximize the relevance and usability of the findings.

Changes: To emphasize the importance of including individuals with psychiatric disabilities in the activities of this RRTC, we added ''key stakeholders, including individuals with disabilities'' as a requirement of dissemination specified in paragraph (c)(iii) and we clarified that the term ''key stakeholders'' in paragraph (c)(iv) includes individuals with psychiatric disabilities.

Final Priority

Background

This final priority is in concert with NIDRR's Long-Range Plan for Fiscal Years 2013–2017 (Plan). The Plan, which was published in the **Federal Register** on April 4, 2013 (78 FR 20299), can be accessed on the Internet at the following site: *www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to improve the health and functioning, employment, and community living and participation of individuals with disabilities through comprehensive programs of research, engineering, training, technical assistance, and knowledge translation and dissemination. The Plan reflects NIDRR's commitment to quality, relevance, and balance of its programs to ensure appropriate attention to all aspects of well-being of individuals with disabilities and to all types and degrees of disability.

This priority reflects a major area or domain of NIDRR's research agenda (community living and participation), combined with a specific broad

disability population (psychiatric disability).

Definitions

The research that is proposed under this priority must be focused on one or more stages of research. If the RRTC is to conduct research that can be categorized under more than one research stage, or research that progresses from one stage to another, those research stages must be clearly specified. For the purposes of this priority, the stages of research, which we published for comment on January 25, 2013 (78 FR 5330), are:

(i) *Exploration and Discovery* means the stage of research that generates hypotheses or theories by conducting new and refined analyses of data, producing observational findings, and creating other sources of research-based information. This research stage may include identifying or describing the barriers to and facilitators of improved outcomes of individuals with disabilities, as well as identifying or describing existing practices, programs, or policies that are associated with important aspects of the lives of individuals with disabilities. Results achieved under this stage of research may inform the development of interventions or lead to evaluations of interventions or policies. The results of the exploration and discovery stage of research may also be used to inform decisions or priorities.

(ii) *Intervention Development* means the stage of research that focuses on generating and testing interventions that have the potential to improve outcomes for individuals with disabilities. Intervention development involves determining the active components of possible interventions, developing measures that would be required to illustrate outcomes, specifying target populations, conducting field tests, and assessing the feasibility of conducting a well-designed intervention study. Results from this stage of research may be used to inform the design of a study to test the efficacy of an intervention.

(iii) *Intervention Efficacy* means the stage of research during which a project evaluates and tests whether an intervention is feasible, practical, and has the potential to yield positive outcomes for individuals with disabilities. Efficacy research may assess the strength of the relationships between an intervention and outcomes, and may identify factors or individual characteristics that affect the relationship between the intervention and outcomes. Efficacy research can inform decisions about whether there is sufficient evidence to support ''scaling-up'' an intervention to other sites and contexts. This stage of research can include assessing the training needed for wide-scale implementation of the intervention, and approaches to evaluation of the intervention in real world applications.

(iv) *Scale-Up Evaluation* means the stage of research during which a project analyzes whether an intervention is effective in producing improved outcomes for individuals with disabilities when implemented in a real-world setting. During this stage of research, a project tests the outcomes of an evidence-based intervention in different settings. The project examines the challenges to successful replication of the intervention, and the circumstances and activities that contribute to successful adoption of the intervention in real-world settings. This stage of research may also include well-designed studies of an intervention that has been widely adopted in practice, but that lacks a sufficient evidence-base to demonstrate its effectiveness.

Priority—RRTC on Community Living and Participation for Individuals with Psychiatric Disabilities.

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for an RRTC on Community Living and Participation for Individuals with Psychiatric Disabilities.

The RRTC must contribute to improving the community living and participation outcomes of individuals with psychiatric disabilities by:

(a) Conducting research activities in one or more of the following priority areas, focusing on individuals with psychiatric disabilities as a group or on individuals in specific disability or demographic subpopulations of individuals with psychiatric disabilities:

(i) Technology to improve community living and participation outcomes for individuals with psychiatric disabilities.

(ii) Individual and environmental factors associated with improved community living and participation outcomes for individuals with psychiatric disabilities.

(iii) Interventions that contribute to improved community living and participation outcomes for individuals with psychiatric disabilities. Interventions include any strategy, practice, program, policy, or tool that, when implemented as intended, contributes to improvements in outcomes for individuals with psychiatric disabilities.

(iv) Effects of government practices, policies, and programs on community living and participation outcomes for individuals with psychiatric disabilities.

(v) Practices and policies that contribute to improved community living and participation outcomes for transition-aged youth with psychiatric disabilities;

(b) Focusing research on one or more specific stages of research. If the RRTC plans to conduct research that can be categorized under more than one of the research stages, or research that progresses from one stage to another, those stages must be clearly specified. These stages and their definitions are provided at the beginning of the Final Priority section in this notice; and

(c) Serving as a national resource center related to community living and participation for individuals with psychiatric disabilities, their families, service and support providers, and other stakeholders by conducting knowledge translation activities that include, but are not limited to:

(i) Providing information and technical assistance to service providers, individuals with psychiatric disabilities and their representatives, and other key stakeholders;

(ii) Providing training, including graduate, pre-service, and in-service training, to rehabilitation service providers and other disability service providers, to facilitate more effective delivery of services to individuals with psychiatric disabilities. This training may be provided through conferences, workshops, public education programs, in-service training programs, and similar activities;

(iii) Disseminating research-based information and materials related to community living and participation for individuals with psychiatric disabilities to key stakeholders, including individuals with psychiatric disabilities; and

(iv) Involving key stakeholder groups, including individuals with psychiatric disabilities, in the activities conducted under paragraph (a) in order to maximize the relevance and usability of the new knowledge generated by the RRTC.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an

application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this final priority only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

The benefits of the Disability and Rehabilitation Research Projects and Centers Program have been well established over the years, as projects similar to the one envisioned by the final priority have been completed successfully. The new RRTC will generate, and promote the use of, new knowledge that will improve the options for individuals with disabilities to perform regular activities of their choice in the community.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 15, 2013.

Michael K. Yudin,

Delegated the authority to perform the functions and the duties of the Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–11978 Filed 5–17–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[CFDA Number: 84.373Y]

Final Priority; Technical Assistance To Improve State Data Capacity—National Technical Assistance Center To Improve State Capacity To Accurately Collect and Report IDEA Data

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority under the Technical Assistance to Improve State Data Capacity program. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2013 and later years. We take this action to focus attention on an identified national need to provide technical assistance (TA) to States to improve their capacity to meet the data collection and reporting requirements of the Individuals with Disabilities Education Act (IDEA). We intend this priority to establish a TA center to improve State capacity to accurately collect and report IDEA data (Data Center).

DATES: *Effective Date:* This priority is effective June 19, 2013.

FOR FURTHER INFORMATION CONTACT: Richelle Davis, U.S. Department of Education, 400 Maryland Avenue SW., Room 4052, Potomac Center Plaza (PCP), Washington, DC 20202–2600. Telephone: (202) 245–7401 or by email: *richelle.davis@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of the Technical Assistance on State Data Collection program is to improve the capacity of States to meet their IDEA data collection and reporting requirements under sections 616 and 618 of the IDEA. Funding for the program is authorized under section 611(c)(1) of the IDEA, which gives the Secretary the authority to reserve funds appropriated under section 611 of the IDEA to provide TA authorized under section 616(i) of the IDEA. Section 616(i) requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of sections 616 and 618 of the IDEA are collected, analyzed, and accurately reported. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements under the IDEA.

Program Authority: 20 U.S.C. 1411(c), 1416(i), and 1418(c).

Applicable Program Regulations: 34 CFR 300.702.

We published a notice of proposed priority for this competition in the **Federal Register** on August 6, 2012 (77 FR 46658). That notice contained background information and our reasons for proposing this particular priority.

Except for minor editorial and technical revisions (noted below), there are no differences between the proposed priority and this final priority. We made these minor technical revisions:

(a) Clarified information in requirement (e)(3) about attendance at Department sponsored data conferences;

(b) Deleted the TA and dissemination activities (c), (j), and part of (m)(2) that were included in the proposed priority as these are Department data review responsibilities (see section 616(i)(1) of the IDEA);

(c) Clarified the required Data Center Web site content and distinguished it from Department data postings in current TA and dissemination activity (f);

(d) Clarified that records of TA activities conducted by the Data Center must be available to the project officer in current TA and dissemination activity (c);

(e) Clarified that the purpose of leadership and coordination activity (a) is to consult with TA recipients and other stakeholders about their TA needs as they relate to the outcomes and activities of the Data Center; and

(f) Added more examples of allowable TA activities, including training for new State IDEA Data Managers, developing white papers and technical briefs, and consulting with IDEA Data Managers and others to identify ways to enhance State data system usability.

Public Comment: In response to our invitation in the notice of proposed priority, eight parties submitted comments on the proposed priority.

We group major issues according to subject. Generally, we do not address technical and other minor changes. In addition, we do not address comments that raised concerns not directly related to the proposed priority.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the priority since publication of the notice of proposed priority follows.

General Comments

Comment: Two commenters agreed that TA is needed to improve State data reporting capacity, and one commenter supported providing TA focused on the use of built-in ED*Facts* data validation tools to support data quality. One commenter agreed that TA about data management issues relating to protecting privacy, confidentiality, and security of data would be beneficial. None of these comments requested changes.

Discussion: The Office of Special Education Programs (OSEP) appreciates the feedback received from commenters about the need for the Data Center to provide TA to improve the capacity of States to meet the IDEA data reporting requirements.

Changes: None.

Focus TA on Assessment and Discipline Data

Comment: Three commenters agreed with the importance of focusing on assessment and discipline data, and two commenters agreed with the need for TA for addressing issues of data governance and coordination across offices about decisions and actions associated with data collection and reporting. One commenter stated that assessment and discipline data are not problematic in all States and that data errors are a result of the complexity of the Department's data collection and reporting requirements. The commenters did not request changes to the priority.

Discussion: OSEP appreciates the comments affirming that the Data Center's scope of work will address areas in which States have the greatest need for TA. OSEP agrees that assessment and discipline data are not problematic in all States and that it is possible that some of the evident errors in State data arise in the course of complying with IDEA reporting requirements. However, it is the responsibility of each State to submit valid and reliable data to meet IDEA reporting requirements. Changing reporting requirements would require a separate public rulemaking process.

Changes: None.

TA Products and Services To Build Staff Capacity

Comment: Six commenters agreed with the need for TA to build staff capacity to collect, report, and analyze IDEA data. Two commenters specifically requested that new IDEA Data Manager training be included in the priority. One commenter requested that white papers or technical briefs about proposed or current IDEA data collections be included in the priority. Another commenter suggested placing more emphasis on the provision of TA to build local staff capacity, one commenter suggested placing less emphasis on building local staff capacity, and one commenter raised concerns about placing any emphasis on building local staff capacity due to the wide variations in State systems and inherent difficulties in tailoring TA to account for these variations. One commenter suggested that the Data Center assist the Department in changing the data collections rather

than provide TA that builds local staff capacity.

Discussion: OSEP agrees that there is a need to build staff capacity to collect, report, and analyze IDEA data. We believe this can be accomplished using a wide range of products (e.g., white papers, technical briefs) and services (e.g., training new State IDEA Data Managers) and by providing TA to staff at all levels of the data collection and reporting system, including local program staff. We believe that providing TA to local staff will improve the quality of State IDEA data, as the majority of data reported under sections 616 and 618 of the IDEA are collected by local programs, local educational agencies (LEAs), and early intervention service (EIS) providers). Because of variations in State data systems, however, we agree that TA provided to local program staff should also include State staff and be tailored to the State context. In addition, under section 616 of the IDEA, States must report to the public on the performance of local programs by posting on the State agency's Web site the performance of each local program as measured against the State's targets for each indicator in the State Performance Plan (SPP) and Annual Performance Report (APR) under section 616(b)(2)(C)(ii)(I) of the IDEA, furthering the need for high-quality local data.

OSEP also understands the desire to change data collection requirements to reduce reporting burden, but the purpose of the Data Center is to provide TA to States to meet IDEA data collection and reporting requirements. The data requirements promote accountability and provide transparency to the public about the use of IDEA funds. Further, changing data requirements would require a separate public rulemaking process, and it is beyond the Data Center's scope of work to provide TA to the Department.

Changes: We have revised the priority to clarify that: training for new State IDEA Data Managers, and development of white papers and technical briefs, would be appropriate TA activities for the Data Center; the scope of work for the Data Center includes support to States to build capacity to collect, report, and analyze IDEA data and does not include support to the Department (which is evident through the deletion of TA and dissemination activities (c), (j), and part of (m)(2) from the proposed priority); and TA provided under the current TA and dissemination activity (c) to local program representatives must also include State staff and be tailored to the State context.

TA as Consultation About Data Systems

Comment: One commenter noted challenges to using the State data system to run data queries but did not recommend any changes to the priority.

Discussion: Data queries are the methods, or codes, to retrieve data from a database. OSEP agrees with the commenter that if it is difficult for State staff to retrieve data from a system, they are less likely to use the data. OSEP believes that it is important to encourage use of data by State staff, because State staff who are using data are more likely to identify and correct errors, thereby improving the quality of the data. The purpose of this priority is to improve State capacity to meet IDEA data collection requirements, including requirements as to quality, validity, and completeness, and, therefore, TA to improve data system usability fits within the priority.

Changes: We have revised the priority to clarify that the Data Center may provide TA to States to identify system usability improvements that increase data use and data quality, provided that such TA activities are linked to improving State capacity to meet IDEA data collection requirements.

TA Through Conference Attendance

Comment: Two commenters suggested that the Data Center provide funding for State IDEA Data Managers to attend national meetings.

Discussion: The purpose of the Data Center is to provide TA to improve the capacity of States to meet the IDEA data collection and reporting requirements. It is beyond the scope of the priority to provide travel support for State IDEA Data Managers to attend conferences.

Changes: None.

Data About Students in One Disability Category

Comment: One commenter expressed concern about the reliability and validity of data collected on children with visual impairments and the effect that inaccurate data may have on providing these students with a free appropriate public education. No changes to the priority were proposed.

Discussion: We understand the importance of reporting accurate data for all students with disabilities, including students with visual impairments. The purpose of the Data Center is to provide TA to build State capacity to meet IDEA data collection and reporting requirements, which includes ensuring the accuracy of data reported about children and students with disabilities in all age ranges and all disability groups.

Changes: None.

Automated Data Validation

Comment: One commenter discussed the need for automated data validation checks in the Department's data collection system (ED*Facts*).

Discussion: OSEP agrees that automated data validation tools improve the quality of IDEA data. The proposed priority therefore included a requirement for the Data Center to collect recommendations for validation checks that could be added to ED*Facts.*

Changes: None.

Needs Assessments

Comment: One commenter recommended that the Data Center survey States to determine the need for new TA tools. The commenter recommended that States be involved in developing the TA tools.

Discussion: OSEP agrees with the commenter.

Changes: We have revised the priority to require the Data Center to consult with TA recipients or other informed stakeholders to identify TA needs, including TA products and services.

Data Reporting Requirements, Review, and Posting

Comment: Several commenters suggested ways the Data Center could improve the review and follow-up procedures associated with State-reported IDEA data, including: develop new IDEA data reporting guidance, publish IDEA data on the Data Center's Web site, assist the Department in aligning data reporting requirements across various programs that collect data about students with disabilities, review State-reported IDEA data, and maintain ongoing communication with States on behalf of the Department as follow-up in the data review process.

Discussion: The purpose of the priority is to provide TA to States to improve their capacity to meet IDEA data collection and reporting requirements and not to improve the Department's functions. The recommendations are not within the scope of the priority.

Changes: We have, however, revised the priority to clarify that the scope of work of the new Data Center is to provide TA to States to build their capacity to collect, analyze, and report IDEA data and does not include assisting the Department in reviewing State-reported data, communicating with States on behalf of the Department, or publishing IDEA data on behalf of the Department. As noted above, the changes are evident in the deletion of TA and dissemination activities (c), (j),

and part of (m)(2) that were in the proposed priority.

Data Analyses

Comment: One commenter suggested that the Data Center be required to collaborate with ED*Facts* Partner Support Center to provide feedback to the States about errors or anomalies identified in their IDEA section 618 data.

Discussion: OSEP agrees with the commenter that feedback to States about errors or anomalies in their IDEA section 618 data should be efficient and coordinated. OSEP is working with the ED*Facts* office to ensure State ED*Facts* Coordinators and State IDEA Data Managers receive joint communication from the Department, as appropriate. The Data Center will not review IDEA section 618 or APR data on behalf of the Department or provide feedback to the States about the quality of the data on behalf of the Department.

Changes: We have revised the priority by deleting TA and dissemination activity (j) from the proposed priority (which would have established a toll-free number and means of electronic communication between the Data Center and States about IDEA data submissions and IDEA data errors or anomalies).

Final Priority

National Technical Assistance Center To Improve State Capacity To Accurately Collect and Report IDEA Data

The purpose of this priority is to fund a cooperative agreement to support the establishment and operation of a National Technical Assistance Center To Improve State Capacity To Accurately Collect and Report IDEA Data (Data Center). The Data Center will provide TA to improve the capacity of States to meet IDEA data collection and reporting requirements by:

(a) Improving data infrastructure by coordinating and promoting communication and effective data governance strategies among relevant State offices including State educational agencies (SEAs) and State lead agencies, local educational agencies (LEAs), schools, early intervention service (EIS) providers, and TA providers to improve the quality of the IDEA data;

(b) Using results from the Department's auto-generated error reports to communicate with State IDEA Data Managers and other relevant stakeholders in the State (e.g., ED*Facts* Coordinator) about data that appear to be inaccurate and provide support to the State (as needed) to enhance current State validation procedures to prevent future errors in State-reported IDEA data;

(c) Using the results of the Department's review of State-reported data to help States ensure that data are collected and reported from all programs providing special education and related services within the State;

(d) Addressing personnel training needs by developing effective informational tools (e.g., training modules) and resources (e.g., cross-walk documents about IDEA and non-IDEA data elements) about data collection and reporting requirements that States can use to train personnel in schools, programs, agencies, and districts;

(e) Supporting States in submitting data into ED*Facts* by coordinating with ED*Facts* TA providers (i.e., Partner Support Center; see *www2.ed.gov/about/inits/ed/edfacts/support.html*) about IDEA-specific data reporting requirements and providing ED*Facts* reports and TA to States to help them improve the accuracy of their IDEA data submissions;

(f) Improving IDEA data validation by using results from data reviews conducted by the Department to work with States to generate tools (e.g., templates of data dashboards) that can be used by States to accurately communicate data to local data-consumer groups (e.g., school boards, the general public) and lead to improvements in the validity and reliability of data required by IDEA; and

(g) Using results from the Department's review of State-reported APR data to provide intensive and individualized TA to improve the accuracy of qualitative information provided in the APR about the State's efforts to improve its implementation of the requirements and purposes of IDEA, and to more accurately target its future improvement activities.

The TA provided by the Data Center must be directed at all relevant parties within a State that can affect the quality of IDEA data and must not be limited to State special education or early intervention offices. The Data Center's TA must primarily target data issues identified through the Department's review of IDEA data. TA needs can also be identified by a State's review of IDEA data or other relevant means, but TA must be based on an identified need related to improving IDEA data accuracy or timeliness. Effectiveness of the Data Center's TA will be demonstrated through changes in a State's capacity to collect and report valid and reliable IDEA data and resolve identified data issues.

Funding for the Data Center is authorized under section 611(c)(1) of the IDEA, which gives the Secretary the authority to reserve funds appropriated under section 611 of the IDEA to provide TA authorized under section 616(i) of the IDEA. Section 616(i) requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of sections 616 and 618 of the IDEA are collected, analyzed, and accurately reported. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements under the IDEA.

To be considered for funding under this absolute priority, applicants must meet the application requirements contained in this priority. Any project funded under this priority also must meet the programmatic and administrative requirements specified in the priority.

Application Requirements. An applicant must include in its application—

(a) A logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the project. A logic model communicates how a project will achieve its outcomes and provides a framework for both the formative and summative evaluations of the project;

Note: The following Web site provides more information on logic models and lists multiple online resources: *www.cdc.gov/eval/resources/index.htm;*

(b) A plan to implement the activities described in the *Project Activities* section of this priority;

(c) A plan, linked to the project's logic model, for a formative evaluation of the project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the project, including objective measures of progress in implementing the project and ensuring the quality of products and services;

(d) A budget for a summative evaluation to be conducted by an independent third party;

(e) A budget for attendance at the following:

(1) A one and one-half day kick-off meeting to be held in Washington, DC, after receipt of the award, and an annual planning meeting held in Washington, DC, with the OSEP project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(2) A three-day project directors' conference in Washington, DC, during each year of the project period;

(3) A three-day data conference up to twice each year in Washington, DC, and planned by the National Center for Education Statistics (NCES) for data professionals from all levels of government to discuss technical and policy issues related to the collection, maintenance, and use of education data, new evidence-based practices related to data, and Department initiatives about data collection and reporting, during each year of the project period;

(4) A one-day intensive review meeting that will be held in Washington, DC, during the last half of the second year of the project period; and

(5) Up to 36 days per year on-site at the Department to participate in meetings about IDEA data; meet with ED*Facts* staff, as appropriate; conduct conference sessions with program staff from States, LEAs, schools, EIS providers, and other local programs that contribute to the State data system to meet IDEA data collection requirements (e.g., NCES conferences); coordinate TA activities with other Department TA initiatives including, but not limited to, the Privacy TA Center (see *www2.ed.gov/policy/gen/guid/ptac/index.html*), Statewide Longitudinal Database Systems TA (see *http://nces.ed.gov/programs/slds/*), Implementation and Support Unit TA (see *www2.ed.gov/about/inits/ed/implementation-support-unit/index.html*), and ED*Facts* Partner Support Center (see *www2.ed.gov/about/inits/ed/edfacts/support.html*); and attend other meetings as requested by OSEP; and

(f) A line item in the budget for an annual set-aside of four percent of the grant amount to support emerging needs that are consistent with the project's activities, as those needs are identified in consultation with OSEP.

Note: With approval from the OSEP project officer, the Data Center must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period.

Project Activities. To meet the requirements of this priority, the Data Center, at a minimum, must conduct the following activities:

Technology and Tools

(a) Assist relevant parties in the State in the development of data validation procedures and tools; and

(b) Assist States in creating or enhancing TA tools that build local staff capacity to accurately collect and report data under IDEA Parts B and C that is required to be reported to the Department and the public under sections 616 and 618 of the IDEA (e.g., reviewing current State training efforts and consulting with the SEA or State lead agency about materials and methods to improve efficiency or effectiveness of State training strategies); tools must be designed to improve the capacity of States to meet IDEA data requirements.

TA and Dissemination Activities

(a) Provide TA to State data submitters and local data collectors on various data quality issues; topics must include summaries of data quality issues evident from data reviews that will be primarily conducted by the Department; as appropriate, technology should be used to convey information efficiently and effectively (e.g., webinars);

(b) Develop an agenda for information sessions, which can be conducted at conferences or through webinars, specific to required IDEA data and submit the agenda for approval by OSEP. The purpose of the sessions is to ensure that State IDEA Data Managers have current knowledge and tools to collect, analyze, and accurately report IDEA data to the Department and gain new knowledge and tools that can be used to build data capacity at the local level;

(c) Provide a range of general and targeted TA products and services [1] on evidence-based practices that result in valid and reliable data and build the capacity of data collectors to collect valid and reliable data (e.g., State IDEA Data Manager training webinars for newly hired staff, white papers, technical briefs, review of data systems for usability improvements); all TA must improve the capacity of States to meet IDEA data requirements; all TA inquiries and responses must be recorded and be accessible to the OSEP project officer;

(d) Conduct approximately eight intensive on-site TA visits each year focused on improving the capacity of States to meet IDEA data requirements. Visits should be distributed among Part C and Part B programs based on need and consultation with OSEP. On-site TA visits should be coordinated with other Department on-site visits (e.g., ED*Facts,* OSEP monitoring), to the extent that coordination will lead to improvements in the collection, analysis, and accurate reporting of IDEA Part B data at the school, LEA, and State levels and of IDEA Part C data by EIS providers and at the EIS program and State levels. All intensive TA visits should include State IDEA Data Managers, ED*Facts* Coordinators (as appropriate), and other relevant State parties. TA activities should emphasize building staff or data system capacity at State and local levels. Intensive TA may include a broad range of activities to meet the needs of each State. For example, an intensive TA activity may include the review of the data systems used by the State to identify system usability improvements to increase data use and data quality. The TA visits may include local data collectors or reporters, such as representatives from local EIS providers, and must focus on: (1) Resolving an identified data validity issue or system capacity issue; (2) achieving measurable outcomes; and (3) ''mapping'' the relationship of the data validity issue or system capacity issue with other IDEA data elements that are likely to be affected by the data validity issue or system capacity issue;

(e) Plan and conduct data analytic workshops for local data collectors and reporters, which can be conducted at conferences or through webinars, to improve the capacity of States to meet IDEA data collection requirements. The workshops must target interdisciplinary teams of professionals from a small group of LEAs or EIS providers from each participating State to analyze the validity of data about a targeted issue relevant to infants, toddlers, children, or students with disabilities (e.g., ensuring consistency in data reporting on outcomes in all local programs in the State) and lead to plans that can be used by the EIS providers or LEAs to improve their IDEA data collection and reporting, as well as inform State-level data quality initiatives;

(f) Maintain a Web site that meets government or industry-recognized standards for accessibility and is targeted to local and State data collectors. TA material developed by the Data Center, including the results of analyses conducted to improve State capacity to collect and report IDEA data, may be posted on the Data Center site. Note that the Department will post IDEA section 618 data collection instructions (e.g., ED*Facts* file specifications) on *www.ed.gov/edfacts* and will publish IDEA section 618 data on a *.gov Web site (e.g., *www.data.gov/education*);

(g) Support States in verifying the accuracy and completeness of IDEA data prior to submission to the Department

[1] For information about universal/general, targeted/specialized, and intensive/sustained TA, see *https://tacc-epic.s3.amazonaws.com/uploads/site/162/ConceptFrmwrkLModel%2BDefsAug2012.pdf?AWSAccessKeyId=AKIAIMS3GHWZEDKKDRDQ&Expires=1367515628&Signature=80%2FKA2BtZN3JjV1KS2ZIj1xUHhA%3D.*

through activities such as data analyses, including ensuring that data are consistent with data about students with disabilities reported in other data collections (e.g., ensure that counts of students with disabilities reported to meet IDEA reporting requirements align appropriately with counts reported for other Federal programs); analytic activities must be linked to improving State capacity to meet the IDEA data collection requirements;

(h) Solicit and compile State recommendations for automated data validation procedures that can be built into ED*Facts* to support States in submitting accurate data. Examples include business rules that would prevent States from submitting invalid data (e.g., greater than 100 percent of assessment participants scoring proficient) and alerts that would ask the States to verify the accuracy of improbable data prior to completion of the submission (e.g., no data where non-zero counts are expected);

(i) Prepare and disseminate topical reports, documents, and other materials that support States in meeting IDEA data collection and reporting requirements;

(j) Develop guidance documents and tools for States to use to communicate with local data collectors and reporters about new or changing data requirements; the Data Center should communicate with States using current technology; and

(k) Support States in meeting APR submission requirements, including by—

(1) As needed, evaluating sampling plans developed by States to report APR data based on a sample of districts, schools, or EIS providers;

(2) Evaluating the quality, accuracy, and validity of SPP and APR quantitative data; and

(3) Using results from the Department's review of APR data to support States in their analyses of available data so that States can provide accurate qualitative information to the Department about their efforts to meet the requirements and purposes of the IDEA, and to more accurately target future improvement activities in their SPPs and APRs.

Leadership and Coordination Activities

(a) Consult with representatives from State and local educational agencies and State Part C lead agencies and EIS providers; school or district administrators; IDEA data collectors; data system staff responsible for IDEA data quality; data system management or data governance staff; and other consumers of State-reported IDEA data and informed stakeholders, as appropriate, on TA needs of stakeholders as they relate to the activities and outcomes of the Data Center, and provide a list of these representatives to OSEP within eight weeks of receiving its grant award notice. For this purpose, the Data Center may convene meetings, whether in person, by phone, or other means, or may consult with people individually about the activities and outcomes of the Data Center;

(b) Communicate and coordinate, on an ongoing basis, with other Department-funded projects to: (1) Develop products to improve data collection capacity (e.g., What Works Clearinghouse); (2) support State monitoring of IDEA implementation through data use; and (3) develop and disseminate resources about data privacy issues (e.g., Privacy TA Center; see www.ed.gov/ptac); and

(c) Maintain ongoing communication with the OSEP project officer.

Fourth and Fifth Years of the Project

In deciding whether to continue funding the project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary. This review will be conducted during a one-day intensive meeting in Washington, DC, that will be held during the last half of the second year of the project period;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The quality, relevance, and usefulness of the project's activities and products and the degree to which the project's activities and products have contributed to changed practice and improved State capacity to collect and report high-quality data required under sections 616 and 618 of the IDEA.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements. OSEP is under no obligation to make an award for this priority. The decision to make an award will be based on the quality of applications received and available funding.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and

explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this final priority only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities. A Data Center funded under the priority established by this regulatory action will assist States in complying with Federal laws and regulations. Without this regulatory action, the burden of improving State capacity to collect, report, and analyze IDEA data would fall solely on the responsible State and local entities.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

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: May 15, 2013.

Michael Yudin,

Delegated the authority to perform the functions and duties of the Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–11971 Filed 5–17–13; 8:45 am]

BILLING CODE 4000–01–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 105–53, 105–55, 105–56, 105–57, and 105–60

[GSPMR Case 2012–105–1; Docket 2012–0010; Sequence 1]

RIN 3090–AJ28

U.S. General Services Administration Federal Property Management Regulations; Administrative Wage Garnishment

AGENCY: Office of the Chief Financial Officer, U.S. General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is amending the U.S. General Services Administration Property Management Regulation (GSPMR) to remove information concerning the General Services Board of Contract Appeals (GSBCA), which no longer exists, and to provide information concerning its successor, the Civilian Board of Contract Appeals (CBCA).

DATES: *Effective Date:* May 20, 2013.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Erik Dorman, Financial Policy and Analysis Division, at 202–501–4568 or via email at *erik.dorman@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite GSPMR Case 2012–105–1.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule is to update the references to the U.S. General Services Administration Board of Contract Appeals, which no longer exists, and to also provide information concerning its successor, the Civilian Board of Contract Appeals, to include its creation, authority, functions, location, mailing address, and telephone number. The Administrative Wage Garnishment Code of Federal Regulations (CFR) Parts affected are as follows:

- 41 CFR part 105–53 provides a general description of GSA and of its components and their functions.
- 41 CFR part 105–55 provides standards and procedures for the administrative collection, offset, compromise, and the suspension or termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701(b).
- 41 CFR part 105–56 provides standards and procedures for the collection under 5 U.S.C. 5514 of certain

debts to the United States by administrative offset from the disposable pay of a GSA employee or a cross-serviced agency employee.

- 41 CFR part 105–57 provides standards and procedures, pursuant to the Debt Collection Improvement Act of 1996 (codified at 31 U.S.C. 3720D) and U.S. Department of the Treasury Wage Garnishment Regulations (at 31 CFR 285.11), for GSA to collect money from a debtor's disposable pay by means of administrative wage garnishment to satisfy delinquent non-tax debt owed to the United States.
- 41 CFR part 105–60 provides a general description of policies and procedures of GSA regarding public access to GSA records.

II. Executive Orders 12866 and 13563

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

III. Regulatory Flexibility Act

This final rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* This final rule is also exempt from the Regulatory Flexibility Act per 5 U.S.C. 553(a)(2) because it applies to agency management. However, this final rule is being published to provide transparency in the promulgation of Federal policies.

IV. Executive Order 13132

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

V. Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one (1) year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

VI. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the U.S. Small Business Regulatory Enforcement Act, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or export markets.

VII. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FMR do not impose 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 41 CFR Parts 105–53, 105–55, 105–56, 105–57, and 105–60

Claims, Government public contracts and property management, and Income taxes.

Dated: May 3, 2013.

Dan Tangherlini,

Acting Administrator of General Services.

For the reasons set forth in the preamble, GSA amends 41 CFR parts 105–53, 105–55, 105–56, 105–57, and 105–60 as set forth below:

PART 105–53—STATEMENT OF ORGANIZATION AND FUNCTIONS

■ 1. The authority citation for 41 CFR part 105–53 continues to read as follows:

Authority: 5 U.S.C. 552(a)(1), Pub. L. 90–23, 81 Stat. 54 sec. (a)(1); 40 U.S.C. 486(c), Pub. L. 81–152, 63 Stat. 390, sec. 205(c).

■ 2. Revise § 105–53.120 to read as follows:

§ 105–53.120 Address and telephone numbers.

The Office of the Administrator; Office of Civil Rights; Office of Citizen Services and Innovative Technologies; Office of the Chief Information Officer; Office of Emergency Response and Recovery; Office of the Chief Financial Officer; Chief Administrative Services Officer; Office of Congressional and Intergovernmental Affairs; Office of Small Business Utilization; Office of General Counsel; Office of the Chief People Officer; Office of Communications and Marketing; Office of Governmentwide Policy; Public Buildings Service and the Office of Inspector General are located at 18th and F Streets NW., Washington, DC 20405. The Federal Acquisition Service is located at 2200 Crystal Drive Room 1000, Arlington, VA 22202–3713; however, the mailing address is Washington, DC 20406. The telephone number for the above addresses is 202–472–1082. The Civilian Board of Contract Appeals (CBCA) is located at 1800 M Street NW., 6th Floor, Washington, DC 20036; however, the CBCA mailing address is 1800 F Street NW., Washington, DC 20405. The CBCA telephone number is 202–606–8800. The addresses of the eleven regional offices are provided in § 105–53.151.

■ 3. Revise § 105–53.132 to read as follows:

§ 105–53.132 Civilian Board of Contract Appeals.

(a) *Creation and authority.* The Civilian Board of Contract Appeals, headed by the Chairman, Civilian Board of Contract Appeals, was established on January 6, 2007, pursuant to section 847 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109–163, 119 Stat. 3391.

(b) *Functions.* The CBCA hears, considers, and decides contract disputes between Government contractors and Executive agencies (other than the U.S. Department of Defense, the U.S. Department of the Army, the U.S. Department of the Navy, the U.S. Department of the Air Force, the U.S. National Aeronautics and Space Administration, the U.S. Postal Service, the Postal Rate Commission, and the Tennessee Valley Authority) under the provisions of the Contract Disputes Act, 41 U.S.C. 7101–7109, and regulations and rules issued thereunder. The Board also conducts other proceedings as required or permitted under statutes or regulations. Such other proceedings include the resolution of disputes involving grants and contracts under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450, *et seq.;* the resolution of disputes between insurance companies and the U.S. Department of Agriculture's Risk Management Agency (RMA) involving actions of the Federal Crop Insurance

Corporation (FCIC) pursuant to the Federal Crop Insurance Act, 7 U.S.C. 1501, *et seq.;* requests by carriers or freight forwarders to review actions taken by the Audit Division of the U.S. General Services Administration's Office of Transportation and Property Management pursuant to 31 U.S.C. 3726(i)(1); claims by Federal civilian employees against the United States for reimbursement of expenses incurred while on official temporary duty travel, and expenses incurred in connection with relocation to a new duty station pursuant to 31 U.S.C. 3702; and requests of agency disbursing or certifying officials, or agency heads, on questions involving payment of travel or relocation expenses pursuant to section 204 of the U.S. General Accounting Office Act of 1996, Public Law 104–316.

(c) *Regulations.* Regulations pertaining to CBCA programs are published in 48 CFR Chapter 61. Information on availability of the regulations is provided in § 105–53.116.

§ 105–53.138 [Amended]

■ 4. Amend § 105–53.138 by removing the word ''Board'' and adding ''Civilian Board'' in its place.

PART 105–55—COLLECTION OF CLAIMS OWED THE UNITED STATES

■ 5. The authority citation for 41 CFR part 105–55 continues to read as follows:

Authority: 5 U.S.C. 552–553; 31 U.S.C. 321, 3701, 3711, 3716, 3717, 3718, 3719, 3720B, 3720D; 31 CFR parts 900–904.

■ 6. Amend § 105–55.002 by revising paragraph (l) to read as follows:

§ 105–55.002 Definitions.

* * * * *

(l) *Hearing official* means a Board Judge of the Civilian Board of Contract Appeals.

* * * * *

§ 105–55.011 [Amended]

■ 7. Amend § 105–55.011 by—

■ a. Removing from paragraph (e)(1) ''GSA Board of Contract Appeals (GSBCA) at the address indicated in paragraph (e)(6) of this section'' and adding ''Civilian Board of Contract Appeals (CBCA) at 1800 F Street NW., Washington, DC 20405'' in its place;

■ b. Removing from paragraph (e)(5) ''GSBCA'' and adding ''CBCA'' in its place; and

■ c. Removing from paragraph (e)(6) ''GSA Central Office, 1800 F Street NW., Washington, DC 20405,'' and adding ''1800 M Street NW., 6th Floor, Washington, DC 20036,'' in its place.

PART 105–56—SALARY OFFSET FOR INDEBTEDNESS OF FEDERAL EMPLOYEES TO THE UNITED STATES

■ 8. The authority citation for 41 CFR part 105–56 continues to read as follows:

Authority: 5 U.S.C. 5514; 31 U.S.C. 3711; 31 U.S.C. 3716; 5 CFR part 550, subpart K; 31 CFR part 5; 31 CFR 285.7; 31 CFR parts 900–904.

§ 105–56.003 [Amended]

■ 9. Amend § 105–56.003 by removing from paragraph (m) ''GSA Board of Contract Appeals (GSBCA)'' and adding ''Civilian Board of Contract Appeals (CBCA)'' in its place.

§ 105–56.006 [Amended]

■ 10. Amend § 105–56.006 by—

■ a. Removing from paragraph (d)(1) ''GSBCA'' and adding ''CBCA'' in its place; and

■ b. Removing from paragraph (e) ''GSA Central Office, 1800 F St., NW., Washington, DC 20405,'' and adding ''1800 M Street NW., 6th Floor, Washington, DC 20036,'' in its place.

PART 105–57—ADMINISTRATION WAGE GARNISHMENT

■ 11. The authority citation for 41 CFR part 105–57 is revised to read as follows:

Authority: 5 U.S.C. 552–553, 31 U.S.C. 3720D, 31 CFR 285.11.

§ 105–57.002 [Amended]

■ 12. Amend § 105–57.002 by removing from paragraph (p) ''GSA Board of Contract Appeals (GSBCA)'' and adding ''Civilian Board of Contract Appeals (CBCA)'' in its place.

§ 105–57.005 [Amended]

■ 13. Amend § 105–57.005 by—

■ a. Removing from paragraph (a) ''GSA Board of Contract Appeals (GSBCA) at the address indicated in paragraph (b)(2) of this section'' and adding ''Civilian Board of Contract Appeals (CBCA) at 1800 F Street NW., Washington, DC 20405'' in its place; and

■ b. Removing from paragraph (b)(2) ''GSA Central Office, 1800 F St. NW., Washington, DC 20405,'' and adding ''1800 M Street NW., 6th Floor, Washington, DC 20036,'' in its place.

PART 105–60—PUBLIC AVAILABILITY OF AGENCY RECORDS AND INFORMATIONAL MATERIALS

■ 14. The authority citation for 41 CFR part 105–60 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 40 U.S.C. 486(c).

■ 15. Amend § 105–60.602 by revising paragraph (d)(2) to read as follows:

§ 105–60.602 Definitions.

* * * * *

(d) * * *

(2) The Counsel to the Civilian Board of Contract Appeals (CBCA) for material and information which is the responsibility of the CBCA or testimony of current or former CBCA employees;

* * * * *

§ 105–60.603 [Amended]

■ 16. Amend § 105–60.603 by removing from paragraph (a) the word ''Board'' and adding ''Civilian Board'' in its place.

[FR Doc. 2013–11911 Filed 5–17–13; 8:45 am]

BILLING CODE 6820–FM–P

DEPARTMENT OF ENERGY

48 CFR Part 952

RIN 1990–AA37

Contractor Legal Management Requirements; Acquisition Regulations; Correction

AGENCY: Department of Energy.

ACTION: Final rule; correction.

SUMMARY: The Department of Energy (DOE) is correcting a final rule that appeared in the **Federal Register** of May 3, 2013 (78 FR 25795). In this document, DOE revised existing regulations covering contractor legal management requirements. Conforming amendments were also made to the Department of Energy Acquisition Regulation (DEAR).

DATES: This correction is effective July 2, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Mulch, Attorney-Adviser, U.S. Department of Energy, Office of General Counsel, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–5746. Email: *eric.mulch@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: In FR Doc. 2013–10485, appearing on page 25795 in the **Federal Register** of Friday, May 3, 2013, the following correction is made:

952.231–71 [Corrected]

■ On page 25817, second column, DEAR 952.231–71(f)(1)(i) is corrected to read:

''(i) Which are otherwise unallowable by law or the provisions of this contract, including the cost reimbursement limitations contained in 48 CFR part 970.31, as supplemented by 48 CFR part 931;''

Issued in Washington, DC, on May 14, 2013.

Paul Bosco,

Director, Office of Acquisition and Project Management.

[FR Doc. 2013–11927 Filed 5–17–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 121018563–3418–02]

RIN 0648–XC687

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

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting retention of Alaska plaice in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 2013 initial total allowable catch (ITAC) of Alaska plaice in the BSAI has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 15, 2013, through 2400 hrs, A.l.t., December 31, 2013.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2013 ITAC Alaska plaice in the BSAI is 17,000 metric tons (mt) as established by the final 2013 and 2014 final harvest specifications for groundfish of the GOA (78 FR 13813, March 1, 2013).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2013 ITAC of Alaska plaice in the BSAI has been reached. Therefore, NMFS is requiring that Alaska plaice caught in the BSAI be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay prohibiting the retention of Alaska plaice in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of May 10, 2013.

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

This action is required by § 679.20 and § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: May 15, 2013.

Kara Meckley,

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

[FR Doc. 2013–11950 Filed 5–15–13; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Doc. No. 101108560–3462–02]

RIN 0648–BA43

Fisheries of the Exclusive Economic Zone Off Alaska; Revise Maximum Retainable Amounts of Groundfish Bering Sea and Aleutian Islands

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

ACTION: Final rule.

SUMMARY: NMFS issues a regulation to increase the maximum retainable amounts (MRAs) of groundfish using arrowtooth flounder (*Atheresthes stomias*) and Kamchatka flounder (*Atheresthes evermanni*) as basis species in the Bering Sea and Aleutian Islands management area (BSAI). This action allows the use of BSAI arrowtooth flounder and Kamchatka flounder as basis species for the retention of species closed to directed fishing and is necessary to improve retention of otherwise marketable groundfish in these BSAI fisheries. This action also includes four regulatory amendments related to harvest management of Kamchatka flounder.

Two amendments are necessary to account for Kamchatka flounder in the same manner as arrowtooth flounder in the BSAI and to aid in the recordkeeping, reporting, and catch accounting of flatfish in the BSAI.

The third amendment is necessary to provide NMFS the flexibility to allocate Kamchatka flounder (and other species in the future) to the Western Alaska Community Development Quota (CDQ) Program in the annual harvest specifications. Through this action, NMFS intends to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, and other applicable law.

DATES: Effective June 19, 2013.

ADDRESSES: Electronic copies of the final Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) for this action may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov*. The proposed rule to implement this action may also be accessed at *http://alaskafisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Jeff Hartman, 907–586–7228 or Tom Pearson, 907–481–1780.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the groundfish fisheries in the exclusive economic zone in the BSAI under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq*. Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

Regulations at § 679.20(e) and (f), and Table 11 to 50 CFR part 679 establish MRA percentages for groundfish species and species groups. An MRA is the maximum round weight of a species or species group closed to directed fishing that may be retained onboard a vessel. NMFS established MRAs to allow vessels engaged in fishing for species or species groups open to directed fishing (basis species) to retain a specified amount of species or species group closed to directed fishing. The percentage of a species or species group closed to directed fishing retained in relation to the basis species must not exceed the MRAs listed in Table 11 to 50 CFR part 679.

MRA percentages serve as a management tool to slow harvest rates and reduce the incentive for targeting species closed to directed fishing. MRAs allow for some retention of species closed to directed fishing instead of requiring that catch of all species closed to directed fishing be discarded. MRA percentages reflect a balance between the recognized need to slow harvest rates and minimize the potential for discards, and, in some cases, provide an increased opportunity to harvest available total allowable catch (TAC) through limited retention.

The Department of Commerce, NOAA Office for Law Enforcement or the United States Coast Guard, District 17, Enforcement Branch may review production data to determine if vessels have complied with specified MRAs by comparing the estimated round weight of the retained species closed to directed fishing with the estimated round weight of all retained basis species. The amount of round weight equivalent (defined at § 679.2) of each retained species must not exceed the MRA, a specified percentage, of the round weight of a basis species. For example, when Pacific cod is open to directed fishing and arrowtooth flounder is closed to directed fishing, a vessel operator may retain a round weight equivalent amount of arrowtooth flounder of up to 35 percent of the round weight equivalent of Pacific cod that is retained onboard the vessel. In this example, all incidental catch of arrowtooth flounder in excess of the 35 percent MRA, from Table 11 to 50 CFR part 679, must be discarded.

MRAs for Groundfish in Arrowtooth Flounder Directed Fishery

The Council recognized that efforts by the non-pelagic trawl fleet to improve retention of groundfish species in the BSAI arrowtooth flounder fishery are constrained by the current zero MRAs for groundfish where arrowtooth flounder is a basis species. Arrowtooth flounder has become an important species for some non-pelagic trawl vessels to retain and process. Specifically, arrowtooth flounder is harvested and processed by non-pelagic trawl catcher/processor vessels operating in non-pollock fisheries in the BSAI, more commonly known as the Amendment 80 sector (72 FR 52668, September 14, 2007). While this species is occasionally caught incidentally by other gear and operation type, they are typically discarded and not retained or processed.

In October 2010, the Council recommended setting the MRAs for BSAI groundfish using arrowtooth flounder as the basis species at the same MRA percentages as those set for BSAI groundfish using Pacific cod as a basis species with two exceptions (Greenland turbot and the ''other species'' group). The EA/RIR prepared for this action demonstrates that the MRAs listed in Table 11 to 50 CFR part 679 for groundfish caught in the Pacific cod directed fishery represent a conservative guide for managing incidental catch in the arrowtooth flounder fishery. MRAs for groundfish species in the Pacific cod directed fishery are lower than the MRAs for a number of groundfish species that are commonly caught by the non-pelagic trawl fleet in other directed flatfish fisheries.

The Council recommended that the MRAs for Greenland turbot in the arrowtooth flounder directed fishery be based on the approximate average incidental catch of Greenland turbot in those fisheries between 2003 and 2009 because average gross earnings per pound of retained arrowtooth flounder increased during that time. The Council recommended that the MRAs for the aggregated ''other species'' group (skates, sharks, sculpins, and octopus) caught in the arrowtooth flounder fishery also be based on the approximate average incidental catch observed between 2003 and 2009. The Council intends these MRA modifications to allow vessels fishing in the arrowtooth flounder and/or Kamchatka flounder fisheries some retention of incidentally-caught Greenland turbot and ''other species'' if Greenland turbot and ''other species'' are closed to directed fishing.

Prior Management Actions on Groundfish in Arrowtooth Flounder and Kamchatka Flounder Directed Fisheries

Prior to 2011, arrowtooth flounder and Kamchatka flounder were managed together with a single overfishing level (OFL), acceptable biological catch (ABC), and TAC in the BSAI. Arrowtooth flounder and Kamchatka flounder are caught at the same time in the non-pelagic trawl fishery, and are often difficult to distinguish from each other. Throughout most of the BSAI, however, Kamchatka flounder are less abundant than arrowtooth flounder. As the directed fishery for arrowtooth flounder and market prices for Kamchatka flounder have increased, Kamchatka flounder in the arrowtooth flounder fishery has been caught in disproportionately greater amounts relative to Kamchatka flounder biomass estimates. In 2010, the Council recommended that separate OFLs, ABCs, and TACs be established for arrowtooth flounder and Kamchatka flounder to protect the stock of Kamchatka flounder (76 FR 11139, March 1, 2011). The impacts of the harvest strategies and resulting TAC amounts were analyzed in the 2007 Alaska Groundfish Harvest Final Specifications Environmental Impact Statement available at *http://alaskafisheries.noaa.gov.* For purposes of MRA compliance, Kamchatka flounder was grouped with ''other flatfish'' (see footnote 2 to Table 11 to part 50 CFR 679), and arrowtooth flounder and Kamchatka flounder were assigned different MRAs.

Revisions to MRAs and Prohibited Species Catch

This rule revises Table 11 to 50 CFR part 679 to increase the MRAs for groundfish species and species groups closed to directed fishing using arrowtooth flounder as the basis species from zero percent to 20 percent for pollock, Pacific cod, Atka mackerel, Alaska plaice, yellowfin sole, other flatfish, rock sole, flathead sole, and squid; from zero percent to 7 percent for Greenland turbot; from zero percent to 1 percent for sablefish; from zero percent to 2 percent for shortraker rockfish and rougheye rockfish (combined); from zero percent to 5 percent for aggregated rockfish; from zero percent to 7 percent for Greenland turbot; and from zero percent to 3 percent for the ''other species'' group.

This rule revises Table 11 to eliminate language that is no longer relevant because of revisions implemented through prior actions. NMFS moves Kamchatka flounder from ''other flatfish'' to the arrowtooth flounder category in Table 11 to 50 CFR part 679. NMFS revises footnote 4, which defines ''other species,'' to remove the sentence ''Forage fish, as defined at Table 2c to this part are not included in the 'other species' category.'' This revision eliminates an unnecessary clarification

because capelin, eulachon, and smelt were removed from ''other species'' category and placed in a forage fish species category in 1998 (63 FR 13009, March 17, 1998). This revision eliminates a potential source of confusion for the entities subject to this rule who are required to use the revised Table 11 to comply with groundfish MRAs.

Management Measures

Three additional regulatory amendments provide for the identical MRA, PSC, and harvest management measures for arrowtooth flounder and Kamchatka flounder. These amendments are necessary to facilitate recordkeeping, reporting, and catch accounting of arrowtooth flounder and Kamchatka flounder and would ensure consistent timing of the harvest of these two species. A fourth amendment is necessary to clarify how NMFS will determine whether to allocate a portion of a new TAC category to the Western Alaska Community Development Quota (CDQ) program.

The first amendment revises § 679.21(e)(3)(iv)(C) to include Kamchatka flounder in the same trawl fishery category for PSC management as arrowtooth flounder. This revision is necessary because arrowtooth flounder and Kamchatka flounder are harvested in a mixed groundfish fishery in which vessels typically encounter similar PSC species.

The second amendment establishes identical seasonal opening dates for arrowtooth flounder and Kamchatka flounder, and is necessary to manage the Kamchatka flounder fishery in the same time period as the arrowtooth flounder fishery. Arrowtooth and Kamchatka flounder have historically been managed together because they are mixed-stock species and are often targeted together. Initiating the fishing season for these two species on different dates would cause significant management difficulties and therefore NMFS establishes concurrent seasonal management. This rule revises the BSAI groundfish seasons at § 679.23(e)(1) to include Kamchatka flounder with arrowtooth flounder and Greenland turbot so that the season for all these species would open on May 1.

The third amendment revises Table 3 to 50 CFR part 679, which lists the product recovery rates (PRR) for groundfish species and conversion rates for Pacific halibut. These revisions consolidate the eight flatfish species (including Kamchatka flounder) in Table 3 to 50 CFR part 679 into a single row, and apply identical PRRs to these eight flatfish species. This consolidation of flatfish into one row would simplify Table 3 and is necessary to facilitate recordkeeping, reporting, and MRA determination. Currently, identical PRRs are listed in Table 3 to 50 CFR part 679 for these eight individual species of flatfish, with the exception of yellowfin sole, which is also listed as having a PRR for surimi. This rule establishes one surimi PRR for all the species within the consolidated flatfish category because the similar morphology of the species within this category is likely to produce a similar proportion of utilized surimi product. This rule uses the surimi PRR currently listed for yellowfin sole for the consolidated flatfish category. If the consolidated flatfish category was not assigned a PRR for surimi, compliance with MRAs could not be determined for this product form.

The fourth amendment revises § 679.20(b)(1)(ii) to explain how NMFS will determine whether to allocate a portion of a new TAC category to the CDQ Program in the annual harvest specifications. NMFS implemented the current regulations § 679.20(b)(1)(ii) in the final rule for Amendment 80 to the FMP (72 FR 52668, September 14, 2007). These regulations state that if the groundfish harvest specifications change a TAC category allocated to a CDQ reserve by combining or splitting a species, species group, or management area, then the same percentage of the TAC apportioned to a CDQ reserve in § 679.20 (b)(1)(ii)(A) through (D) will apply to the new TAC category. However, section 305(i)(1)(B)(ii)(II) of the Magnuson-Stevens Act addresses allocations to the CDQ Program and provides more specific guidance, namely, ''the allocation under the (CDQ) program in any directed fishery of the Bering Sea and Aleutian Islands (other than a fishery for halibut, sablefish, pollock, and crab) established after the date of enactment of this subclause shall be a total allocation (directed and nontarget combined) of 10.7 percent.'' In the final 2007 and 2008 harvest specifications for groundfish of the BSAI (72 FR 9451, March 2, 2007), NMFS explained our determination that the term ''directed fishery'' for purposes of section 305(i)(1) of the MSA means a fishery for which sufficient TAC exists to open a directed fishery for that species or species group and that this fishery is economically valuable enough for the CDQ groups to target.

The creation of a new TAC category for Kamchatka flounder required NMFS, in the final 2011 and 2012 harvest specifications for groundfish of the BSAI (76 FR 11139, March 1, 2011), to determine if Kamchatka flounder was a ''directed fishery'' for purposes of the CDQ Program. If NMFS determined it was a directed fishery, 10.7 percent of the Kamchatka flounder TAC would be allocated to the CDQ Program. As described in more detail in the final 2011 and 2012 harvest specifications, NMFS determined that Kamchatka flounder was not a ''directed fishery'' for purposes of the CDQ Program. This rule amends § 679.20(b)(1)(ii) to explain how this determination will be made in future harvest specifications should new TAC categories be created.

Specifically, this rule revises regulations at § 679.20(b)(1)(ii)(D) and removes regulations at § 679.20(b)(1)(ii)(E) that govern CDQ allocations for TAC categories that are established when one species or species group is split from an existing species or species group to form a new TAC category. The species specifically allocated to the CDQ Program in 50 CFR part 679 are pollock, sablefish, the ''Amendment 80'' species (Aleutian Islands Pacific ocean perch, Pacific cod, Atka mackerel, yellowfin sole, rock sole, and flathead sole), Bering Sea Greenland turbot, and arrowtooth flounder. Paragraph (D)(*2*) is added to § 679.20(b)(1)(ii) to state that, for all other groundfish species not specifically listed in § 679.20(b)(1)(ii)(A) through (D)(*1*), an amount equal to 10.7 percent of the BSAI TAC would be apportioned to a CDQ reserve if NMFS, after consultation with the Council, determines in the annual harvest specifications that a directed fishery in the BSAI exists for this species under section 305(i)(1)(B)(i) of the Magnuson-Stevens Act. Thus, in determining that a directed fishery exists in the BSAI and whether the fishery is economically valuable enough for CDQ groups to target, the Council and NMFS would consider whether sufficient TAC exists to open a directed fishery for that species in the BSAI and determine through public comment submitted by CDQ groups whether CDQ groups are likely to conduct directed fishing for that species.

Response to Comments

NMFS received one letter of comment on the proposed rule from the Alaska Seafood Cooperative. A summary of that comment and NMFS's response follows.

Comment 1: The commenter supports the proposed rule, as a way to decrease bycatch in the arrowtooth and Kamchatka flounder fisheries, increase value within those fisheries, and increase vessels' ability to achieve optimum yield. The commenter also recommends one revision to the proposed rule.

NMFS proposed that to reduce confusion regarding MRA compliance for thenon-pelagic trawl vessels (Amendment 80 sector), should either arrowtooth flounder or Kamchatka flounder close to directed fishing, then neither arrowtooth flounder nor Kamchatka flounder could be used as a basis species for the retention of groundfish in the Bering Sea and Aleutian Islands. NOAA Fisheries proposed this provision because Arrowtooth and Kamchatka flounder are morphologically similar and can only be distinguished by gill rakers. Once headed and gutted at sea, the two species are indistinguishable, creating reporting and enforcement challenges.

The commenter stated that since 2011, when the Kamchatka flounder fishery has been open to directed fishing, participants in the Amendment 80 sector have cooperated with the NOAA Office for Law Enforcement to comply with MRA accounting requirements despite arrowtooth flounder and Kamchatcka flounder species identification issues, allowing for groundfish to be retained up to the MRA when Kamchatka flounder is open to directed fishing. Under current regulations, BSAI vessels retain arrowtooth flounder and other groundfish species up to the MRA when ''other species'' (including Kamchatka flounder) is open to directed fishing based on official NMFS observer sampling of arrowtooth flounder and Kamchatka flounder catch. Arrowtooth flounder and Kamchatka flounder are recorded in the E-landings production report according to the ratio of each species within the observer's sample for each haul. NOAA Office for Law Enforcement would be able to verify compliance with MRAs by reviewing the amount of each species reported in the E-landings production report, and may assess if the retained catch of either arrowtooth flounder or Kamchatka flounder exceeded the MRA in Table 11. The commenter stated that since arrowtooth flounder and Kamchatka flounder have developed into viable fisheries, having the ability to retain non-target species against them will allow the Amendment 80 sector to further improve the groundfish retention obligations.

The commenter suggests that nothing in the proposed regulation would require a different MRA accounting methodology.

To maintain consistency throughout Table 11 and avoid confusion to the public, the commenter recommends removing proposed footnote 9 in Table 11 and adding a separate row and column designating arrowtooth flounder and Kamchatka flounder in Table 11. This change would provide for separate MRA accounting for these two flounder species. The commenter also requests that if NMFS is unable to remove footnote 9 to Table 11, an editing improvement for Table 11 would be to list Kamchatka flounder in the same row and column as arrowtooth flounder.

Response: NMFS agrees with this comment, and revises the final rule to remove footnote 9 to Table 11, and add a separate row and column designating arrowtooth flounder and Kamchatka flounder in Table 11. NMFS believes this revision is consistent with the intent of the proposed rule to reduce regulatory discards. This change will allow separate MRAs for groundfish caught incidentally to arrowtooth flounder and Kamchatka flounder. The NOAA Office for Law Enforcement verifies that the Amendment 80 sector's current application of observer catch composition data for MRA accounting is an effective method for distinguishing between arrowtooth flounder and Kamchatka flounder, and for ensuring that MRAs for arrowtooth flounder and Kamchatka flounder are not exceeded. NOAA Office for Law Enforcement verifies that the observer composition ratio of Kamchatka flounder to arrowtooth flounder is used to determine the amount of Kamchatka flounder and arrowtooth flounder that may be retained and that this method ensures that the aggregate retained Kamchatka flounder and arrowtooth flounder does not exceed the aggregate of 100 percent of the basis species and up to the MRA for the incidentally-caught species. Other groundfish fishery participants are not currently expected to retain these two species, and MRA compliance for these two species of flatfish has not been an issue for other gear and operation types in the BSAI.

During 2011 the Amendment 80 sector successfully utilized this method for individual species-level MRA accounting for arrowtooth flounder when arrowtooth flounder was closed to directed fishing and Kamchatka flounder was open to directed fishing. A similar procedure is applied in other Bering Sea target fisheries, and NMFS believes that the non-pelagic trawl vessels that retain arrowtooth flounder or Kamchatka flounder will have a strong incentive to constrain catch of both species.

Revisions to the Proposed Rule in the Final Rule

In this final rule, NMFS has removed footnote 9 in Table 11 to Part 679, and listed arrowtooth flounder and Kamchatka flounder as separate lines in each row and column of Table 11. This allows fishery participants to use each species individually as a basis species should one of them close to directed fishing.

This revision does not increase the total amount of any groundfish species that may be harvested in the BSAI groundfish fisheries. Those catch limits are established through the annual specifications process and remain the limit on total catch. This regulatory amendment allows greater retention of species caught incidentally in the BSAI arrowtooth flounder and Kamchatka flounder fishery and is intended to reduce regulatory discards and increase utilization of groundfish species already caught. All catch of groundfish or prohibited species in the arrowtooth flounder fishery that is reported or estimated to be caught using observer data will be subtracted from the TAC for those species, and fisheries will be closed by NMFS once those limits are reached.

MRA compliance monitoring will continue to be based on procedures at § 679.20(e), which estimate MRAs based on production weights, converted by standard product recovery rates to round weight equivalent weights as defined at § 679.2, and MRAs in Table 11 to 50 CFR Part 679. The final rule does not revise MRA percentages from the proposed rule, or otherwise revise arrowtooth flounder or Kamchatka flounder management in a manner that requires changes to the recordkeeping and reporting and MRA enforcement.

Classification

The Administrator, Alaska Region, NMFS, determined that this final rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis (FRFA), the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall also explain the actions a small entity is required to take to comply with a rule or group of rules. The preamble to the proposed rule and this final rule serve as the small entity compliance guide. This action does not require any additional compliance from small

entities that is not described in the preamble. Copies of this final rule are available from NMFS at the following Web site: *http://alaskafisheries.noaa.gov.*

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866.

Final Regulatory Flexibility Analysis

This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. NMFS published the proposed rule on September 14, 2012 (77 FR 56789), with comments invited through October 15, 2012. An IRFA was prepared and summarized in the ''Classification'' section of the preamble to the proposed rule. NMFS received no comments to the IRFA. The description of this action, its purpose, and its legal basis are described in the preamble to the proposed rule and are not repeated here. The FRFA describes the impacts on small entities, which are defined in the IRFA for this action and not repeated here. Analytical requirements for the FRFA are described in the Regulatory Flexibility Act (RFA), sections 604(a)(1) through (5), and summarized below.

The FRFA must contain:

1. A succinct statement of the need for, and objectives of, the rule;

2. A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

3. A description and an estimate of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available;

4. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

5. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The ''universe'' of entities to be considered in a FRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the final rule. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (e.g., user group, gear type, geographic area), that segment would be considered the universe for purposes of this analysis. In preparing a FRFA, an agency may provide either a quantifiable or numerical description of the effects of a rule (and alternatives to the rule), or more general descriptive statements, if quantification is not practicable or reliable.

Summary of Significant Issues Raised During Public Comment

No comments were received that raised significant issues in response to the IRFA specifically or on the economic impacts of the rule generally; therefore, no changes were made to the rule as a result of comments on the IRFA.

Number and Description of Small Entities Regulated by the Final Rule

NMFS estimated the number of small versus large entities by matching the gross earnings from all fisheries of record for 2009 with the vessels, the known ownership of those vessels, and the known affiliations of those vessels in the BSAI groundfish fisheries for that year. Based on those earnings data, the FRFA determined that there are 354 catcher vessels directly regulated by this action that had gross earnings less than $4.0 million, thus categorizing them as small entities based on the threshold that the Small Business Administration uses to define small fishing entities. For catcher/processors, 18 vessels had gross earnings less than $4 million, categorizing them as small entities. The preferred alternative also affects the six CDQ groups because it revises regulations governing how allocations are made to the CDQ Program of TAC categories established by splitting existing quota categories, as has occurred with arrowtooth flounder and Kamchatka flounder. Due to their status as non-profit corporations, the CDQ groups are also considered to be small entities under the Regulatory Flexibility Act.

Recordkeeping and Reporting

Recordkeeping and reporting requirements will not change as a result of the final rule. The action under consideration requires no reporting, recordkeeping, or other compliance requirements that differ from the status quo.

Description of Significant Alternatives to the Final Rule

The Council evaluated three alternatives and three suboptions to increase the MRAs of groundfish in the arrowtooth flounder fishery in the BSAI. Alternative 1, the status quo or no action alternative, would leave the MRAs for groundfish in the BSAI arrowtooth flounder fishery unchanged from current levels, and would continue to require fishermen to discard otherwise marketable groundfish.

Alternative 2 would set the MRAs for groundfish using arrowtooth flounder as a basis species at the same MRA levels for groundfish using Pacific cod as a basis species, with two suboptions to modify the Greenland turbot MRA at 15 percent or 7 percent, and one suboption to modify the ''other species'' group MRA to 3 percent.

Alternative 3 would set the MRAs for groundfish using arrowtooth flounder as a basis species at the same MRA levels for groundfish using flathead sole as a basis species. The Council also considered a suboption to Alternative 3 to change the MRA for Greenland turbot using arrowtooth flounder as a basis species to 15 percent.

To provide the opportunity to the arrowtooth flounder trawl fishing industry to reduce discards by allowing increased retention of groundfish, the Council recommended Alternative 2 as the preferred alternative, with suboptions to modify the MRA for Greenland turbot and the ''other species'' group. In the EA/RIR/IRFA for this action, the preferred alternative listed here has been designated as Alternative 4. Alternative 2, combined with these suboptions, increases MRAs of groundfish closed to directed fishing for arrowtooth flounder as the basis species from zero percent to 20 percent for pollock, Pacific cod, Atka mackerel, Alaska plaice, yellowfin sole, other flatfish, rock sole, flathead sole, and squid; from zero percent to 7 percent for Greenland turbot; from zero percent to 1 percent for sablefish; from zero percent to 2 percent for shortraker and rougheye rockfish (combined); from zero percent to 5 percent for aggregated rockfish; and from zero percent to 3 percent for the ''other species'' group (consisting of skates, sharks, sculpins, and octopus in the aggregate). The Council recommended that the MRAs for Greenland turbot and aggregated ''other species'' be based on the approximate average incidental catch

observed in the arrowtooth flounder fishery between 2003 and 2009. A Greenland turbot MRA of 7 percent allows for increased retention of Greenland turbot when arrowtooth flounder is used as the basis species, when Greenland turbot is closed to directed fishing. Constraining the MRA for Greenland turbot to 7 percent instead of 15 percent may reduce the amount of incidentally-caught Greenland turbot in the Amendment 80 sector directed fishery for arrowtooth flounder, allowing for a greater amount of Greenland turbot to be available for small entities in the longline fishery. The longline fishery relies on access to the Greenland turbot directed fishery. The recommended MRA for ''other species'' conserves the stocks that comprise the ''other species'' group while allowing for some retained catch of these species in the arrowtooth flounder fishery when the species that comprise the ''other species'' group are closed to directed fishing.

Alternative 3 would increase the MRAs of groundfish closed to directed fishing for arrowtooth flounder as the basis species from zero percent to 20 percent for pollock, Pacific cod, Atka mackerel, squid, and for the ''other species'' group (skates, sharks, sculpins, and octopus in the aggregate); from zero percent to 35 percent for Alaska plaice, yellowfin sole, other flatfish, flathead sole, and Greenland turbot; from zero percent to 15 percent for sablefish and aggregated rockfish; and from zero percent to 7 percent for shortraker and rougheye rockfish (combined).

Under Alternative 3, the Council recognized a greater potential for development of fisheries that could increase harvests of species and adversely impact the ability of NMFS to effectively manage several groundfish species within the TAC, and therefore did not recommend this alternative. In general, the development of a fishery is dependent upon a number of factors, including, but not limited to, the price of the MRA species, whether a market exists, accessibility of the species, storage availability, and processing capacity. In addition, the potential for a vessel to harvest a specific species varies across vessels. A vessel operator has more discretion to harvest specific groundfish species if the operator has the ability to limit incidental catch or the ability to discard low-valued fish, while targeting arrowtooth flounder.

Alternatives 2 and 3 would be beneficial to the affected small entities by providing an opportunity to retain additional, economically valuable groundfish species when arrowtooth flounder is a basis species. Under Alternative 2, the benefits to small entities would be slightly lower than under Alternative 3. However, Alternative 2 with suboptions 2.2 and 2.3 (the preferred alternative), that sets the MRA for Greenland turbot at 7 percent and the MRA for the species that comprise the ''other species'' group at 3 percent, reduces unintended impacts to the Greenland turbot directed fishery more effectively and provides greater protection for the species that comprise the ''other species'' group than does Alternative 3. Allowing a greater amount of Greenland turbot retained catch under Alternative 3 may result in earlier closure of the Greenland turbot directed fishery, as compared with Alternative 2 with suboption 2.2. No negative impacts on small entities are associated with either Alternative 2 or 3.

Four additional amendments to the regulations are implemented by this action. The purposes of these amendments are to provide MRA management for Kamchatka flounder that is identical to the MRA management applied to arrowtooth flounder; to coordinate fishing seasons; to facilitate recordkeeping, reporting, and catch accounting of Kamchatka flounder as well as other flatfish species and species groups; and to provide the Council and NMFS greater flexibility in the annual harvest specifications process to allocate TAC (for such species as Kamchatka flounder) to the CDQ Program in the future. These regulatory amendments are required to manage Kamchatka flounder with the same management measures that apply to arrowtooth flounder because of the close association of these two species in the groundfish fisheries.

No negative impacts on small entities are associated with these regulatory amendments. Participants in the Amendment 80 sector are the primary entities that will be affected by this action since only Amendment 80 sector operators have developed markets for arrowtooth flounder and Kamchatka flounder and have expressed interest in retaining these two groundfish species. Small entities are unlikely to be disadvantaged by the opportunity to retain valuable incidental catch that would otherwise be discarded and made unavailable to sell as a marketable product.

Collection-of-Information Requirements

This rule contains no new or revisions to a collection-of information subject to the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries.

Dated: May 15, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

■ 2. In § 679.20, remove paragraph (b)(1)(ii)(E) and revise paragraph (b)(1)(ii)(D) to read as follows:

§ 679.20 General limitations.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(D) *CDQ reserves for other groundfish species.* (*1*) An amount equal to 10.7 percent of the BSAI TACs for Bering Sea Greenland turbot and arrowtooth flounder, and 7.5 percent of the trawl gear allocation of sablefish in the BS and AI is apportioned from the nonspecified reserve established under paragraph (b)(1)(i) of this section to a CDQ reserve for each of these species by management area, subarea, or district.

(*2*) For all other groundfish species not specifically listed in paragraphs (b)(1)(ii)(A) through (b)(1)(ii)(D)(*1*) of this section, an amount equal to 10.7 percent of the BSAI TAC will be apportioned to a CDQ reserve if NMFS, after consultation with the Council and in consideration of public comment, determines in the annual harvest specifications process under paragraph (c) of this section that a directed fishery in the BSAI exists for this species under section 305(i)(1)(B)(i) of the Magnuson-Stevens Act. In making this determination, the Council and NMFS shall consider whether sufficient TAC exists to open a directed fishery for that species in the BSAI and that this species or species group is economically viable for the CDQ group to target.

* * * * *

■ 3. In § 679.21, revise paragraph (e)(3)(iv)(C) to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) * * *

(3) * * *

(iv) * * *

(C) *Greenland turbot/arrowtooth flounder/Kamchatka flounder/sablefish fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of Greenland turbot, arrowtooth flounder, Kamchatka flounder, and sablefish that is greater than the retained amount of any other fishery category defined under this paragraph (e)(3)(iv).

* * * * *

■ 4. In § 679.23, revise paragraph (e)(1) to read as follows:

§ 679.23 Seasons.

* * * * *

(e) * * *

(1) *Directed fishing for arrowtooth flounder, Kamchatka flounder, and Greenland turbot.* Directed fishing for arrowtooth flounder, Kamchatka flounder, and Greenland turbot in the BSAI is authorized from 1200 hours, A.l.t., May 1 through 2400 hours, A.l.t., December 31, subject to the other provisions of this part.

* * * * *

■ 5. Revise Table 3 to part 679 to read as follows:

TABLE 3 TO PART 679—PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES AND CONVERSION RATES FOR PACIFIC HALIBUT

Species code	FMP Species	Product code											
		1, 41, 86, 92, 93, 95 Whole fish	3 Bled	4 Gutted head on	5 Gutted head off	6 H&G with roe	7 H&G west cut	8 H&G east cut	10 H&G w/o tail	11 Kirimi	12 Salted & Split	13 Wings	14 Roe
110	Pacific Cod	1.00	0.98	0.85		0.63	0.57	0.47	0.44		0.45		0.05
	Flatfish other than Pacific Halibut	1.00	0.98	0.90		0.80	0.72	0.65	0.62	0.48			0.08
143	Thornyhead Rockfish	1.00	0.98	0.88		0.55	0.60	0.50					
160	Sculpins	1.00	0.98	0.87			0.50	0.40					
193	Atka Mackerel	1.00	0.98	0.87		0.67	0.64	0.61					
270	Pollock	1.00	0.98	0.80		0.70	0.65	0.56	0.50	0.25			0.07
510	Smelts	1.00	0.98	0.82			0.71						
511	Eulachon	1.00	0.98	0.82			0.71						
516	Capelin	1.00	0.98	0.89			0.78						
	Sharks	1.00	0.98	0.83			0.72						
	Skates	1.00	0.98	0.90				0.32				0.32	
710	Sablefish	1.00	0.98	0.89			0.68	0.63	0.50				
870	Octopus	1.00	0.98	0.81									
875	Squid	1.00	0.98	0.69									
	Rockfish	1.00	0.98	0.88			0.60	0.50					
200	PACIFIC HALIBUT Conversion rates to Net Weight.			0.90	1.0								

TABLE 3 TO PART 679—PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES AND CONVERSION RATES FOR PACIFIC HALIBUT

[Continued]

Species code	FMP Species	Product code											
		15 Pectoral girdle	16 Heads	17 Cheeks	18 Chins	19 Belly	20 Fillets with skin & ribs	21 Fillets with skin no ribs	22 Fillets with ribs no skin	23 Fillets skinless boneless	24 Fillets deep skin	30 Surimi	31 Mince
110	Pacific Cod	0.05		0.05		0.01	0.45	0.35	0.25	0.25		0.15	0.5
	Flatfish other than Pacific Halibut						0.32	0.27	0.27	0.22		0.18	
143	Thornyhead Rockfish		0.20	0.05	0.05	0.05	0.40	0.30	0.35	0.25			
160	Sculpins												
193	Atka Mackerel											0.15	
270	Pollock		0.15				0.35	0.30	0.30	0.21	0.16	0.16[1] 0.17[2]	0.22
510	Smelts							0.38					
511	Eulachon												
516	Capelin												
	Sharks							0.30	0.30	0.25			
	Skates												
710	Sablefish			0.05			0.35	0.30	0.30	0.25			
870	Octopus												
875	Squid												
	Rockfish		0.15	0.05	0.05	0.10	0.40	0.30	0.33	0.25			
200	PACIFIC HALIBUT Conversion rates to Net Weight.												

TABLE 3 TO PART 679—PRODUCT RECOVERY RATES FOR GROUNDFISH SPECIES AND CONVERSION RATES FOR PACIFIC HALIBUT

[Continued]

Species code	FMP Species	Product code							
		32 Meal	33 Oil	34 Milt	35 Stomachs	36 Mantles	37 Butterfly backbone removed	88, 89 Infested or decomposed fish	98, 99 Discards
110	Pacific Cod	0.17					0.43	0.00	1.00
	Flatfish other than Pacific Halibut	0.17						0.00	1.00
143	Thornyhead Rockfish	0.17						0.00	1.00
160	Sculpins	0.17						0.00	1.00
193	Atka Mackerel	0.17						0.00	1.00
270	Pollock	0.17					0.43	0.00	1.00
510	Smelts	0.17						0.00	1.00
511	Eulachon	0.17						0.00	1.00
516	Capelin	0.17						0.00	1.00
	Sharks	0.17						0.00	1.00
	Skates	0.17						0.00	1.00
710	Sablefish	0.17						0.00	1.00
870	Octopus	0.17				0.85		0.00	1.00
875	Squid	0.17				0.75		0.00	1.00
	Rockfish							0.00	1.00
200	PACIFIC HALIBUT Conversion rates to Net Weight							0.00	0.75

[1] Standard pollock surimi rate during January through June.
[2] Standard pollock surimi rate during July through December.
Notes: To obtain round weight of groundfish, divide the product weight of groundfish by the table PRR. To obtain IFQ net weight of Pacific halibut, multiply the product weight of halibut by the table conversion rate. To obtain round weight from net weight of Pacific halibut, divide net weight by 0.75 or multiply by 1.33333.

■ 6. Revise Table 11 to part 679 to read as follows:

TABLE 11 TO PART 679—BSAI RETAINABLE PERCENTAGES

BASIS SPECIES		INCIDENTAL CATCH SPECIES																
Code	Species	Pollock	Pacific cod	Atka mackerel	Alaska plaice	Arrow-Tooth[9]	Kamchatka	Yellow fin sole	Other flatfish[2]	Rock sole	Flathead sole	Greenland turbot	Sable fish[1]	Shortraker/ rougheye	Aggregated rockfish[6]	Squid	Aggregated forage fish[7]	Other species[4]
110	Pacific cod	20	na[5]	20	20	35	35	20	20	20	20	1	1	2	5	20	2	20
121	Arrowtooth	20	20	20	20	na	20	20	20	20	20	7	1	2	5	20	2	3
117	Kamchatka	20	20	20	20	20	na	20	20	20	20	7	1	2	5	20	2	3
122	Flathead sole	20	20	20	35	35	35	35	35	35	na	35	15	7	15	20	2	20
123	Rock sole	20	20	20	35	35	35	35	35	na	35	1	1	2	15	20	2	20
127	Yellowfin sole	20	20	20	35	35	35	na	35	35	35	1	1	2	5	20	2	20
133	Alaska Plaice	20	20	20	na	35	35	35	35	35	35	1	1	2	5	20	2	20
134	Greenland turbot	20	20	20	20	35	35	20	20	20	20	na	15	7	15	20	2	20
136	Northern	20	20	20	20	35	35	20	20	20	20	35	15	7	15	20	2	20
141	Pacific Ocean perch	20	20	20	20	35	35	20	20	20	20	35	15	7	15	20	2	20
152/151	Shortraker/Rougheye	20	20	20	20	35	35	20	20	20	20	35	15	na	5	20	2	20
193	Atka mackerel	20	20	na	20	35	35	20	20	20	20	1	1	2	5	20	2	20
270	Pollock	na	20	20	20	35	35	20	20	20	20	1	1	2	5	20	2	20
710	Sablefish[1]	20	20	20	20	35	35	20	20	20	20	35	na	7	15	20	2	20
875	Squid	20	20	20	20	35	35	20	20	20	20	1	1	2	5	na	2	20
Other flatfish[2]		20	20	20	35	35	35	35	na	35	35	1	1	2	5	20	2	20
Other rockfish[3]		20	20	20	20	35	35	20	20	20	20	35	15	7	15	20	2	20
Other species[4]		20	20	20	20	35	35	20	20	20	20	1	1	2	5	20	2	na
Aggregated amount non-groundfish species[8].		20	20	20	20	35	35	20	20	20	20	1	1	2	5	20	2	20

[1] Sablefish: for fixed gear restrictions, see § 679.7(f)(3)(ii) and (f)(11).
[2] Other flatfish includes all flatfish species, except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, Alaska plaice, arrowtooth flounder, and Kamchatka flounder.
[3] Other rockfish includes all "rockfish" as defined at § 679.2, except for Pacific ocean perch; and northern, shortraker, and rougheye rockfish.
[4] The other species group includes sculpins, sharks, skates, and octopus.
[5] na = not applicable
[6] Aggregated rockfish includes all "rockfish" as defined at § 679.2, except shortraker and rougheye rockfish.
[7] Forage fish are defined at Table 2c to this part.
[8] All legally retained species of fish and shellfish, including CDQ halibut and IFQ halibut that are not listed as FMP groundfish in Tables 2a and 2c to this part.

[FR Doc. 2013–11953 Filed 5–17–13; 8:45 am]
BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 97
Monday, May 20, 2013

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1218

[Document Number AMS–FV–12–0062]

Blueberry Promotion, Research and Information Order; Assessment Rate Increase

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on amending the Blueberry Promotion, Research and Information Order (Order) to increase the assessment rate from $12 to $18 per ton (an increase of $0.003 per pound). The Order is administered by the U.S. Highbush Blueberry Council (USHBC) with oversight by the U.S. Department of Agriculture (USDA). Under the program, assessments are collected from domestic producers and importers and used for research and promotion projects designed to maintain and expand the market for highbush blueberries in the United States and abroad. Additional funds would allow the USHBC to expand its health research activities and promotional efforts. The USHBC uses its health information in its promotion messaging to help build demand for blueberries. Increasing demand would help move the growing supply of blueberries, which would benefit producers and consumers.

DATES: Comments must be received by July 19, 2013.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments may be submitted on the Internet at: *http://www.regulations.gov* or to the Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., Room 1406–S, Stop 0244, Washington, DC 20250–0244; facsimile: (202) 205–2800. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection, including name and address, if provided, in the above office during regular business hours or it can be viewed at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Research and Promotion Division, Fruit and Vegetable Program, AMS, USDA, P.O. Box 831, Beavercreek, Oregon, 97004; telephone: (503) 632–8848; facsimile (503) 632–8852; or electronic mail: *Maureen.Pello@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the Order (7 CFR part 1218). The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411–7425).

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the 1996 Act provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act, a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This proposed rule invites comments on amending the Order to increase the assessment rate from $12 to $18 per ton (an increase of $0.003 per pound). The Order is administered by the USHBC with oversight by USDA. Under the program, assessments are collected from domestic producers and importers and used for research and promotion projects designed to maintain and expand the market for highbush blueberries in the United States and abroad. Additional funds would enable the USHBC to expand its health research activities and promotional efforts. The USHBC uses its health information in its promotion messaging to help build demand for blueberries. Increasing demand would help move the growing supply of blueberries, which would benefit producers and consumers. This action was unanimously recommended by the USHBC.

The Order specifies that the funds to cover the USHBC's expenses shall be paid from assessments on producers and importers, donations from persons not subject to assessments and from other funds available to the USHBC. First handlers are responsible for collecting and submitting reports and producer assessments to the USHBC. Handlers must also maintain records necessary to verify their reports. Importers are responsible for paying assessments to the USHBC on highbush blueberries imported into the United States through the U.S. Customs and Border Protection (Customs). The Order also provides for two exemptions. Producers and importers who produce or import less than 2,000 pounds of blueberries annually, and producers and importers of 100 percent organic blueberries are exempt from the payment of assessments.

Section 1218.52(c) of the Order specifies that assessments shall be levied at a rate of $12 per ton on all highbush blueberries. The assessment rate may be modified with the approval of the Secretary.

The $12 per ton assessment rate has been in effect since the Order's inception in 2000. The USHBC's fiscal year runs from January 1 through

December 31. USHBC expenditures have ranged from $1,522,519 in 2004 to $3,931,296 in 2012. Expenditures for health and nutrition research have ranged from $113,880 in 2004 (7.5 percent of total expenses) to $668,059 in 2011/2012 (17.0 percent of total expenses).

USHBC expenditures for health messaging and promotion activities have ranged from $920,020 in 2004 (60.4 percent of total expenses) to $2,820,817 in 2012 (71.8 percent of total expenses). Pursuant to section 1218.50(i) of the Order, administrative expenditures have been under 15 percent of total expenses annually.

USHBC assessment income has ranged from $1,435,989 in 2004 ($1,080,230 in domestic assessments and $355,759 in import assessments) to $4,051,836 in 2012 ($2,434,646 in domestic assessments and $1,601,966 in import assessments). Additionally, pursuant to section 1218.50(j) of the Order, the USHBC maintains a monetary reserve with funds that do not exceed one fiscal period's budget.

USHBC 2012 Recommendation

The USHBC met on October 5, 2012, and unanimously recommended increasing its assessment rate from $12 to $18 per ton ($0.006 to $0.009 per pound). This equates to an increase of $6 per ton, or $0.003 per pound. Additional funds would enable the USHBC to expand its health research activities and promotional efforts. Since the program's inception, the USHBC has funded several health and nutritional research projects, many of them laboratory studies. USHBC research has shown possibilities relating to various health issues, including cardiovascular health and cancer. However, most of these preliminary findings have been done under laboratory conditions. Additional funds would allow the USHBC to incorporate specific areas of research into expanded clinical (human) trials. Clinical trials are important for the industry to be able to make health claims according to the Federal Trade Commission and the Food and Drug Administration requirements for the advertising of food.

The USHBC uses its health information in its promotion messaging to help build demand for blueberries. Increasing demand would help move the growing supply of blueberries. Worldwide highbush blueberry production has grown from 393 million pounds in 2005 to 753 million pounds in 2010. Production is expected to increase to 1 billion pounds in 2013 and to nearly 1.4 billion pounds by 2015.[1] World highbush blueberry acreage grew from approximately 50,000 acres in 1995 to over 190,000 acres in 2010.[2] North American highbush blueberry acreage increased by over 55 percent from 71,075 acres in 2005 to 110,290 acres in 2010.[3]

With highbush blueberry production expected to increase more than 38 percent by 2015, the USHBC hopes to increase consumption among existing blueberry consumers and to attract new blueberry users. Per capita consumption of blueberries increased from 15.7 ounces in 2000 to 31.4 ounces in 2009.[4] According to the North American Blueberry Council, U.S. per capita consumption is now estimated at 36.2 ounces. In order to maintain a balance between supply and demand, a 38 percent increase in per capita consumption would equate to a level of 50 ounces per person by 2015.

At the proposed $18 per ton assessment rate and assessable tonnage ranging from 350,000 to 500,000 tons (700 million to 1 billion pounds), assessment income could range from $6.3 million to $ 9 million annually. As an example, if 15 percent of the budget was allocated to health and nutrition research and 60 percent were allocated to promotion, funds available for health and nutrition research could range from $945,000 to $1.35 million annually and funds available for health messaging and promotion could range from $3.78 million to $5.4 million annually.

In light of the need to allocate more funds towards health research activities and build demand for blueberries, the USHBC recommended increasing the assessment rate under the Order from $12 to $18 per ton (or by $0.003 per pound). Section 1218.52(c) of the Order is proposed to be amended accordingly. Changes are also proposed to section 1218.52(d)(2) to update the listed Harmonized Tariff Schedule of the United States (HTSUS) numbers; this change is administrative in nature and has no impact on the assessment rate.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of the proposed rule on small entities. Accordingly, AMS has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR Part 121, small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms (first handlers and importers) as those having annual receipts of no more than $7.0 million.

There are approximately 2,000 domestic producers, 78 first handlers and 194 importers of highbush blueberries covered under the program. Dividing the highbush blueberry crop value for 2012 reported by the National Agricultural Statistics Service (NASS) of $781,808,000[5] by the number of producers (2,050) yields an average annual producer revenue estimate of $381,370. It is estimated that in 2012, about 68 percent of the first handlers shipped under $7 million worth of highbush blueberries. Based on 2012 Customs data, it is estimated that 90 percent of the importers shipped under $7 million worth of highbush blueberries. Based on the foregoing, the majority of producers, first handlers and importers may be classified as small entities.

Regarding value of the commodity, as mentioned above, based on 2012 NASS data, the value of the domestic highbush blueberry crop is about $782 million. According to Customs data, the value of 2012 imports was about $515 million.

This proposed rule invites comments on amending section 1218.52(c) of the Order to increase the assessment rate from $12 to $18 per ton (an increase of $0.003 per pound). The Order is administered by the USHBC with oversight by USDA. Under the program, assessments are collected from domestic producers and importers and used for research and promotion projects designed to maintain and expand the market for highbush blueberries in the United States and abroad. Additional funds would enable the USHBC to expand its health research activities and promotional efforts. The USHBC uses its health information in its promotion messaging to help build demand. Increasing demand would help move the growing supply of blueberries, which would benefit producers and consumers. This proposed rule would

[1] Brazelton, C., World Blueberry Acreage & Production, 2011, Brazelton Ag Consulting, p. 49.

[2] Brazelton, World Blueberry Acreage & Production, p. 43.

[3] Brazelton, World Blueberry Acreage & Production, p. 42.

[4] Kaiser, Henry M., An Economic Analysis of Domestic Market Impacts of the U.S. Highbush Blueberry Council, 2010, Cornell University, p. 3.

[5] Noncitrus Fruits and Nuts 2012 Summary, January 2013, USDA, National Agricultural Statistics Service, p. 10.

also update the HTSUS numbers listed in section 1218.52(d)(2). Authority for this action is provided in section 1218.52(c) of the Order and section 517 of the 1996 Act.

Regarding the economic impact of the proposed rule on affected entities, this action would increase the assessment obligation on domestic producers and importers. While assessments impose additional costs on producers and importers, the costs are minimal and uniform on all. The costs would also be offset by the benefits derived from the operation of the program. It is estimated that 1,857 producers and 173 importers pay assessments under the program.

There have been two economic studies conducted since the Order's inception that evaluated the effectiveness of the USHBC's promotion program. The studies were conducted by Dr. Harry M. Kaiser at Cornell University in 2005 and 2010 and titled ''An Economic Analysis of Domestic Market Implications of the U.S. Highbush Blueberry Council.'' These studies may be obtained from Maureen Pello at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section. The 2005 study evaluated the program from 2001–2004 and the 2010 study evaluated the program from 2001–2009. The purpose of the research was twofold: (1) To determine the domestic market implications of the USHBC's promotion program and (2) to complete a benefit-cost ratio (rate of return) for the promotion activities conducted by the USHBC. The impact of the USHBC's export marketing activities was not evaluated because most of the USHBC's marketing budget has been invested in the United States (about 90 percent).

To assess the impact of the USHBC's domestic promotion activities on blueberry disappearance (a measure of demand), an econometric demand model was developed for blueberry disappearance in the United States. The model allowed the impact of the USHBC's generic promotion activities to be distinguished from the impact of other factors that influence demand. These include the price of blueberries, the price of blueberry substitutes, population, and consumer taste and preferences.[6] The research shows that the USHBC's promotion activities increased total blueberry commercial disappearance by 441 million pounds in total, or 49 million pounds per year from 2001 through 2009. This represents an annual increase in blueberry commercial disappearance of 12.3 percent. Thus, the promotional spending by the USHBC has a positive effect on domestic highbush blueberry demand.

The results also indicate that generic blueberry promotion by the USHBC has had a positive impact on the blueberry producers' price. Specifically, from 2001 to 2009, the average increase in price ranged from 14 cents per pound in the case of the least elastic supply response to 5 cents per pound in the case of the most elastic supply response.[7] The average impact over all supply responses was 8.4 cents per pound. In other words, had there been no generic blueberry promotion by the USHBC, the average producers' price would have been 8.4 cents per pound, or 7.2 percent lower than it was from 2001 through 2009.

The studies also show that USHBC promotion efforts have had a positive impact on producer surplus (i.e., producer profits) from 2001 through 2009. The average increase in producer surplus due to generic blueberry promotion by the USHBC ranged from $5.4 million per year, in the case of the least elastic supply response, to $1.9 million per year, in the case of the most elastic supply response. The average increase in producer surplus over all supply responses was $3.2 million per year. Thus, the studies concluded that the domestic promotion efforts of the USHBC have had a positive impact on producer profits since 2001.

An average benefit-cost ratio (BCR) for the USHBC's generic promotion activities was also computed. The BCR measures the net benefits of the program, which is equal to the gain in producer surplus divided by the cost of the marketing program. The BCR exceeded 1.0 for every supply response considered in Dr. Kaiser's study.[8] For the least elastic supply response, the average BCR was 15.41. This implies that, on average from 2001–2009, the benefits of the USHBC promotion program has been over 15 times greater than the costs. At the opposite end of the spectrum in the supply response, the average BCR was computed to be 5.36, implying that the benefits of the USHBC were over five times greater than the costs. Given the wide range of supply responses considered in the analysis, and the fact that the BCR was above 1.0 in all cases, there is significant evidence that the USHBC's promotion programs have been profitable for the domestic blueberry industry. The average BCR over all supply responses was 9.12 (i.e., the benefits of the promotion activities of the USHBC exceeded the costs by nine-fold).

To calculate the percentage of producer revenue represented by the assessment rate, the proposed $18 per ton ($0.009 per pound) assessment rate is divided by the average producer price. According to the NASS, the average producer price ranged from $1.85 per pound in 2011 ($2.14 per pound for fresh and $1.28 per pound for processed) to $1.69 per pound in 2012 ($2.19 per pound for fresh and $0.923 per pound for processed).[9] Thus, the assessment rate as a percentage of producer price could range from 0.486 to 0.532 percent (or from 0.420 to 0.411 percent for fresh and from 0.703 to 0.975 percent for processed).

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581–0093. This proposed rule would not result in a change to the information collection and recordkeeping requirements previously approved and would impose no additional reporting and recordkeeping burden on blueberry producers, first handlers and importers.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

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

Regarding alternatives, the USHBC has been considering an increase in the assessment rate for the past few years. The USHBC has reviewed rates ranging from maintaining the status quo at $12 per ton to doubling the rate to $24 per ton. In 2009, the USHBC recommended increasing the rate to $24 per ton. Two members opposed the increase because a rate of $18 per ton had been discussed

[6] The econometric model used statistical methods with time series data to measure how strongly the various blueberry demand factors are correlated with commercial disappearance in the United States.

[7] Price elasticity of supply is a measure used in economics to show the responsiveness, or elasticity, of the quantity supplied/produced of a good or service to a change in price. When the coefficient is less than one, the supply can be described as inelastic. When the coefficient is greater than one, the supply can be described as elastic.

[8] Kaiser, An Economic Analysis, 2010, p. 24.

[9] Noncitrus Fruits and Nuts, p. 35.

at previous meetings and communicated to producers. USDA published a proposed rule for public comment in July 2009 (74 FR 36955; July 27, 2009) and ultimately withdrew the proposed rule in February 2010 based on the comments received (75 FR 7985; February 23, 2010).

Since that time, the USHBC and its committees have continued to discuss the need to increase the assessment rate. USHBC representatives have met with various producer associations and discussed this issue with their members as well as with importers. Ultimately the USHBC unanimously recommended increasing the rate to $18 per ton at its October 2012 meeting.

While USDA has performed this initial RFA analysis regarding the impact of the proposed rule on small entities, in order to have as much data as possible for a more comprehensive analysis, we invite comments concerning potential effects. USDA is also requesting comments regarding the number and size of entities covered under the proposed Order.

While this proposed rule set forth below has not received the approval of USDA, it has been determined that it is consistent with and would effectuate the purposes of the 1996 Act.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this proposed rule by the date specified will be considered prior to finalizing this action.

List of Subjects in 7 CFR Part 1218

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Blueberry promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Part 1218, Chapter XI of Title 7 is proposed to be amended as follows:

PART 1218—BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 1. The authority citation for 7 CFR part 1218 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 2. In § 1218.52, paragraphs (c) and (d)(2) are revised to read as follows:

§ 1218.52 Assessments.

* * * * *

(c) Such assessments shall be levied at a rate of $18 per ton on all blueberries. The assessment rate will be reviewed, and may be modified with the approval of the Secretary.

(d) * * *

(2) The import assessment shall be uniformly applied to imported fresh and frozen blueberries that are identified by the numbers 0810.40.0029 and 0811.90.2028, respectively, in the Harmonized Tariff Schedule of the United State or any other numbers used to identify fresh and frozen blueberries.

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Dated: May 10, 2013.

David R. Shipman,

Administrator.

[FR Doc. 2013–11852 Filed 5–17–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0424; Directorate Identifier 2013–NM–014–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus 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 Airbus Model A330–200 Freighter, A330–200 and –300, and A340–200 and –300 series airplanes. This proposed AD was prompted by reports of cracked adjacent frame forks of a forward cargo door. This proposed AD would require repetitive detailed inspections for cracks and sheared, loose, or missing rivets of the forward cargo door and, for certain airplanes, of the aft cargo door, and repair if necessary. We are proposing this AD to detect and correct cracked or ruptured cargo door frames, which could result in reduced structural integrity of the forward or aft cargo door.

DATES: We must receive comments on this proposed AD by July 5, 2013.

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 Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; 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–2013–0424; Directorate Identifier 2013–NM–014–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 2012–0274, dated December 21, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

One A330 operator recently reported a case where two adjacent frame (FR) forks of a forward cargo door were found cracked. FR20B was found cracked through, FR21 was found cracked half through. At the time of the findings, the affected aeroplane had accumulated around 21 000 flight cycles (FC) and it had already been inspected in accordance with EASA AD 2011–0007R1 [which corresponds to FAA AD 2012–12–12, Amendment 39–17092 (77 FR 37797, June 25, 2012)] and [airworthiness limitation instructions] ALI Task 523106–01–1. However, during those inspections, the forward cargo door handle access panel is not required to be removed, which explains why the cracks at these two internal frame locations were not detected.

After further analysis, it was determined that, in case of cracked or ruptured (forward or aft) cargo door frame, the loads will be transferred to the remaining structural elements. However, the second load path is able to sustain the loads for a limited number of flight cycles only.

This condition, if not detected and corrected, could lead to rupture of two vertical frames, resulting in reduced structural integrity of the forward or aft cargo door.

To address this condition, Airbus issued four separate Alert Operators Transmissions (AOT), giving instructions for repetitive inspections of the affected areas.

For the reasons described above, this [EASA] AD requires repetitive detailed visual inspections of aft cargo door at FR60 and FR60A [for certain airplanes] and forward cargo door at FR21 and FR20B [for all airplanes], where the cargo door handle access panels are located, as follow:

—outer skin rivets for sheared, loose or missing rivets at frame fork ends,

—whole inner forks for cracks and for sheared, loose or missing rivets at frame web and flange after removal of handle access panels, and

the accomplishment of the applicable corrective actions [which include repair, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA.]

Note: Accomplishment of the above inspections does not cancel accomplishment of the inspections as required by EASA AD 2011–0007R1, nor accomplishment of those in accordance with ALI Task 523106–01–1.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued the following Alert Operator Transmissions (AOTs). The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

- Airbus AOT A330–A52L001–12, dated December 3, 2012.
- Airbus AOT A330–A52L003–12, dated December 3, 2012.
- Airbus AOT A340–A52L002–12, dated December 3, 2012.
- Airbus AOT A340–A52L004–12, dated December 3, 2012.

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.

Differences Between This Proposed AD and the MCAI or Service Information

The service information specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions using a method approved by the FAA or the EASA (or its delegated agent).

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 66 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $5,610, or $85 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

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:

Airbus: Docket No. FAA–2013–0424; Directorate Identifier 2013–NM–014–AD.

(a) Comments Due Date

We must receive comments by July 5, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category; all manufacturer serial numbers (MSN).

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Reason

This AD was prompted by reports of cracked adjacent frame forks of a forward cargo door. We are issuing this AD to detect and correct cracked or ruptured cargo door frames, which could result in reduced structural integrity of the forward or aft cargo door.

(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) Inspections for Certain Airplanes

For Model A330–200, –200 Freighter, and –300 airplanes up to MSN 0162 inclusive, except those on which Airbus Service Bulletin A330–52–3044 has been embodied in service; and for Model A340–200 and –300 airplanes up to MSN 0164 inclusive, except those on which Airbus Service Bulletin A340–52–4054 has been embodied in service: Before the accumulation of 15,800 total flight cycles since the airplane's first flight or within 100 flight cycles after the effective date of this AD, whichever occurs later, do a detailed inspection of the outer skin rivets at the frame fork end of frame (FR)60 and FR60A of the aft cargo door for sheared, loose, or missing rivets; and do a detailed inspection of the whole FR60 and FR60A forks for cracking and for sheared, loose, or missing rivets at the frame web and flanges; in accordance with Airbus Alert Operator Transmission (AOT) A330–A52L001–12, dated December 3, 2012; or Airbus AOT A340–A52L002–12, dated December 3, 2012; as applicable. Repeat the inspections thereafter at intervals not to exceed 400 flight cycles.

(h) Inspections for All Airplanes

Within the applicable compliance time specified in paragraph (h)(1) or (h)(2) of this AD, do a detailed inspection of outer skin rivets at the frame fork end of FR21 and FR20B of the forward cargo door for sheared, loose, or missing rivets; and do a detailed inspection of the whole FR21 and FR20B forks for cracks and for sheared, loose, or missing rivets at the frame web and flanges; in accordance with Airbus AOT A330–A52L003–12, dated December 3, 2012; or Airbus AOT A340–A52L004–12, dated December 3, 2012; as applicable. Repeat this inspection thereafter at intervals not to exceed 800 flight cycles.

(1) For airplanes having less than 18,400 total flight cycles since the airplane's first flight as of the effective date of this AD: Before the accumulation of 10,600 total flight cycles since the airplane's first flight, or within 100 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes having 18,400 total flight cycles or more since the airplane's first flight as of the effective date of this AD: Within 50 flight cycles after the effective date of this AD.

(i) Repair

If any cracking, or sheared, loose, or missing rivet is found during any inspection required by this AD, before further flight, repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

(j) Actions Not Terminating Action

Doing the repair required by paragraph (i) of this AD is not terminating action for the repetitive inspections required by paragraphs (g) and (h) of this AD for that cargo door, unless the repair instruction specifically states it is terminating action.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; 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.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information European Aviation Safety Agency Airworthiness Directive 2012–0274, dated December 21, 2012, and the AOTs identified in paragraphs (l)(1)(i) through (l)(1)(iv) of this AD, for related information.

(i) Airbus AOT A330–A52L001–12, dated December 3, 2012.

(ii) Airbus AOT A330–A52L003–12, dated December 3, 2012.

(iii) Airbus AOT A340–A52L002–12, dated December 3, 2012.

(iv) Airbus AOT A340–A52L004–12, dated December 3, 2012.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued In Renton, Washington, on May 13, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–11913 Filed 5–17–13; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 303

Rules andRegulations Under the Textile Fiber Products Identification Act

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice of proposed rulemaking.

SUMMARY: Based on comments received in response to its Advance Notice of Proposed Rulemaking (''ANPR''), the Commission proposes amending the rules and regulations under the Textile Fiber Products Identification Act (''Textile Rules'' or ''Rules'') to: Incorporate the updated ISO standard 2076:2010(E); allow certain hang-tags that do not disclose the product's full fiber content information; better address electronic commerce by amending the definition of the terms invoice and invoice or other paper; update the guaranty provisions by, among other things, replacing the requirement that suppliers provide a guaranty signed under penalty of perjury with a certification that must be renewed annually, and revising accordingly the form used to file continuing guaranties with the Commission under the Textile, Fur, and Wool Acts; and clarify several other provisions. The Commission seeks comment on these proposals and several remaining issues.

DATES: Written comments must be received on or before July 8, 2013.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Textile Rules, 16 CFR Part 303, Project No. P948404'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/textilerulesnprm* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex G), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robert M. Frisby, Attorney, (202) 326–2098, and Amanda Kostner, Attorney, (202) 326–2880, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Textile Fiber Products Identification Act (''Textile Act'') [1] and Rules require marketers to, among other things, attach a label to each covered textile product disclosing: (1) The generic names and percentages by weight of the constituent fibers in the product; (2) the name under which the manufacturer or other responsible company does business or, in lieu thereof, the company's registered identification number (''RN number''); and (3) the name of the country where the product was processed or manufactured.[2] As part of its ongoing regulatory review program, the Commission published an ANPR in November 2011 seeking comment on the economic impact of, and the continuing need for, the Textile Rules; the benefits of the Rules to consumers; and the burdens the Rules place on businesses.[3] The ANPR also sought comment on specific issues, including whether the Commission should amend the Rules to incorporate the revised version of International Organization for Standardization (''ISO'') standard entitled ''Textiles—Man-made fibres—Generic names,'' 2076:1999(E), clarify disclosure requirements for products containing elastic material and trimmings, clarify disclosure requirements for written advertising, and modify the Rules' guaranty provisions.

This Notice of Proposed Rulemaking (''NPRM'') summarizes the comments received, explains the Commission's decision to retain the Rules, proposes several amendments, and explains why the Commission has declined to propose certain amendments. It also solicits additional comment, and provides analyses under the Regulatory Flexibility Act and the Paperwork Reduction Act. Finally, the NPRM sets forth the Commission's proposed amendments to the Rules.

II. Summary of Comments

The Commission received 17 comments [4] in response to the ANPR from individuals,[5] a fabric manufacturer,[6] trade associations representing industries affected by the Textile Rules,[7] textile compliance and testing entities,[8] and a retailer.[9] The comments indicated widespread support for the Textile Rules. For example, the joint comment of eight textile trade associations (''joint comment'') stated that the use of labels on textiles and apparel benefits consumers and businesses.[10] The comments, however, recommended that the Commission modify or clarify requirements pertaining to fiber content disclosures, country of origin, and the identification of manufacturers in various ways.

In connection with fiber content disclosures, the joint comment and six others supported amending section 303.7 to incorporate the revised ISO standard for man-made fiber names, ISO 2076:2010(E).[11] Six also requested that the Commission clarify provisions relating to fiber content disclosures for trimmings and *ornamentation.*[12] In addition, the joint comment and three others requested that the Commission modify fiber content disclosure requirements when fiber trademarks or fiber performance characteristics appear on hang-tags and other point-of-sale materials.[13]

In connection with country-of-origin disclosures, one comment requested that the Commission explain the interplay between the Textile Rules and U.S. Customs country-of-origin regulations to clarify that the country-of-origin disclosure pursuant to the Rules is consistent with the Customs regulations.[14] In connection with the identification of manufacturers, four urged the Commission to recognize Canadian registered identification numbers (''CAs'') as alternative identification.[15]

The comments also made more general recommendations that did not focus on specific required disclosures. For example, the comments urged the Commission to make the Rules more pertinent to the current textile industry. One such comment asked the Commission to amend the Rules to add and revise defined terms relating to the electronic fulfillment processes widespread in the textile industry (*i.e.,* by including a definition of *electronic agent* and modifying the definition of *invoice or other paper* in the Rules).[16] This comment also urged the Commission to make various changes to the Textile Rules' guaranty provisions, in part to address the fact that most textiles are now imported.

Other comments suggested amendments of a technical nature (*e.g.,* simplifying potentially confusing phrasing in various provisions of the Rules). For example, six expressed strong support for multiple-language disclosures on textile labels to foster international trade.[17] One urged the Commission to define acceptable formats for making such disclosures.[18] Other comments advocated

[1] 15 U.S.C. 70 *et seq.*

[2] *See* 15 U.S.C. 70b(b).

[3] *Federal Trade Commission: Rules and Regulations Under the Textile Fiber Products Identification Act,* 76 FR 68690 (Nov. 7, 2011).

[4] The comments are posted at *http://www.ftc.gov/os/comments/textilerulesanpr/index.shtm.* The Commission has assigned each comment a number appearing after the name of the commenter and the date of submission. This notice cites comments using the last name of the individual submitter or the name of the organization, followed by the number assigned by the Commission.

[5] Lunde (10), Nitaki (7), and Robledo (11).

[6] Classical Silk, Inc. (13).

[7] Joint comment (18) of the American Apparel and Footwear Association (''AAFA''), the American Fiber Manufacturers Association, Inc. (''AFMA''), American Manufacturing Trade Action Coalition (''AMTAC''), the Canadian Apparel Federation (''CAF''), the National Council of Textile Organizations (''NCTO''), the National Retail Federation (''NRF''), the National Textile Association (''NTA''), and the U.S. Association of Importers of Textiles and Apparel (''USA–ITA''). Five of these industry associations also filed individual comments: AAFA (17), CAF (19), NRF (20), NTA (15), and USA–ITA (14).

[8] Bureau Veritas (9), Compliance & Risks, Ltd. (''C&R'') (6), Consumer Testing Laboratories (12), McNeese Customs & Commerce (''McNeese'') (4), and Vartest Laboratories, Inc. (''Vartest'') (3).

[9] IKEA North America Services, LLC (''IKEA'') (5).

[10] Joint comment (18). Two comments from individuals, Nitaki (7) and Robledo (11), expressed concern about the costs of textile regulations, especially on small businesses.

[11] Joint comment (18), AAFA (17), CAF (19), NRF (20), NTA (15), USA–ITA (14), and C&R (6).

[12] Bureau Veritas (9), Consumer Testing Laboratories (12), USA–ITA (14), AAFA (17), CAF (19), and NRF (20).

[13] Joint comment (18), AAFA (17), NTA (15), and USA–ITA (14).

[14] USA–ITA (14).

[15] AAFA (17), CAF (19), NRF (20), and USA–ITA (14).

[16] NRF (20).

[17] AAFA (17), Bureau Veritas (9), CAF (19), C&R (6), McNeese (4), and USA–ITA (14).

[18] Bureau Veritas (9).

modifications to FTC consumer and business education materials related to textiles, including the addition of examples of compliant disclosures (*e.g.,* disclosures relating to decoration or *ornamentation*).[19]

III. Retention of the Rules

As part of the Commission's systematic regulatory review, the ANPR asked whether there is a continuing need for the Rules as currently promulgated and requested comment about the Rules' benefits and costs. The record shows wide support for the Textile Rules from the textile industry. Among other things, comments supporting the Rules explained that they benefit both businesses and consumers, help consumers make informed purchasing decisions, and prevent deceptive marketing.[20] Moreover, a rule is necessary to implement the Textile Act and thus the Commission lacks the discretion to rescind the Rules.

Two comments from individuals that expressed concern about overregulation of textile products failed to provide any tangible evidence to support their assertions.[21] There is no evidence in the record showing that the Rules impose excessive costs on industry, including small businesses, or that the disclosures required by the Rules are not important or material to consumers.

IV. Proposed Amendments

Based on the record and the Commission's experience, the Commission proposes several amendments as explained below.[22] The Commission also explains why it declines to propose several other amendments.

A. Fiber Content Disclosures

The Commission proposes the following amendments to the Rules' fiber content disclosures: (1) Revising section 303.7 to incorporate the updated ISO standard establishing generic fiber names for manufactured fibers; (2) clarifying section 303.12(a) concerning disclosures involving trimmings; (3) revising section 303.17(b) to allow certain hang-tags disclosing fiber names and trademarks, and performance information, without disclosing the product's full fiber content; and (4) clarifying section 303.35, describing products containing virgin or new wool, and sections 303.41 and 303.42, addressing fiber content disclosures in advertising. This section also explains why the Commission declines to propose certain amendments relating to fiber content advocated by comments.

1. International Standards and Regulations

The Commission proposes to amend the Rules to incorporate the revised ISO standard for man-made fiber names. The Commission, however, declines to propose any amendments to further align the Rules with textile regulations in other countries.

(a) The Updated ISO Standard for Man-Made Fiber Names

Section 303.7 (generic names and definitions for manufactured fibers) establishes the generic names for manufactured fibers to be used in the fiber content disclosures required by the Textile Act and Rules. This section establishes such names in two ways. First, it includes the generic names and definitions that the Commission has established through its textile petition process. Second, it establishes through incorporation by reference the generic names and definitions set forth in the ISO standard entitled ''Textiles—Man-made fibres—Generic names,'' 2076:1999(E). Since the Commission incorporated ISO 2076:1999(E) into section 303.7 in 2000, the ISO standard has been updated, and is now identified as ISO 2076: 2010(E).[23]

The comments expressed strong support for modifying section 303.7 to incorporate the revised international standard for man-made fiber names.[24] The joint comment noted that the ISO standard benefits businesses by establishing an international consensus that removes unnecessary barriers to trade. USA–ITA stated that the ISO standard helps its members develop labeling that satisfies the requirements of multiple countries. AAFA noted that the ISO standard would reduce Customs challenges. NRF stated that the Commission's adoption of the ISO standard would help forestall nationally-biased standards that often create barriers to trade and hinder efficient supply-chain management. C&R supported the modification as a way of addressing frequent inquiries from retailers, manufacturers, and brand companies relating to the standard.

Easing barriers to trade was one of the reasons for incorporating the previous version of the international standard into section 303.7 and remains an important priority for the Commission. Incorporating the updated standard would further this goal by permitting more internationally-recognized fiber names. In addition, updating the Rules would promote efficiency by reducing the need for industry members to petition the Commission to recognize new fiber names on a piecemeal basis. Accordingly, the Commission proposes to amend section 303.7 to incorporate the revised ISO standard ISO 2076:2010(E), ''Textiles—Man-made fibres—Generic names.''

The Commission notes that section 303.7 and the revised ISO standard define certain fiber names slightly differently. For example, section 303.7 includes *elasterell-p* as a subclass of *polyester,*[25] while the ISO standard includes *elasterell-p* as an alternate name for *elastomultiester.*[26] Similarly, section 303.7 includes *lastol* as a subclass of *olefin,*[27] while the ISO standard includes *lastol* as an alternate name for *elastolefin.*[28] The comments do not suggest that these differences present an obstacle to incorporating the ISO standard into section 303.7 or warrant any other amendments to that section. However, the Commission seeks comment on whether these differences present any problems and, if so, how the Commission should address them.

USA–ITA recommended that the Commission further amend section 303.7 to automatically incorporate future changes to the ISO standard to eliminate the need to amend section 303.7 each time the standard changes.

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[19] *E.g.,* C&R (6) and AAFA (17).

[20] Joint comment (18), AAFA (17), CAF (19), and NTA (15).

[21] Nitaki (7) and Robledo (11).

[22] Two comments recommended amendments to the Textile Act. Bureau Veritas recommended revising the Textile Act to allow for the naming of fibers present in amounts less than 5% regardless of whether the fibers have a structural significance. Adam Varley recommended adding yak fibers to the definition of wool under the Act, which also would require an amendment to the Wool Act because the definition of wool comes from the Wool Act. Neither commenter provided evidence that the benefits of the proposed amendments, which would require new legislation, would exceed their costs.

[23] The revised standard differs from the previous version in various ways; for example, it establishes *rayon* as an alternate name for the existing name *viscose;* establishes *spandex* as an alternate name for the existing name *elastane;* changes the name *metal fibre* to *metal;* and establishes the following new generic names: *elastomultiester* or *elasterell-p; polylactide* or *PLA;* and *elastolefin* or *lastol.*

[24] Joint comment (18), AAFA (17), CAF (19), NRF (20), NTA (15), USA–ITA (14), and C&R (6).

[25] 16 CFR 303.7(c)(1).

[26] ISO 2076:2010(E) defines *elastomultiester* or *elasterell-p* as follows: Fibre formed by the interaction of two or more chemically distinct linear macromolecules in two or more phases (of which none exceeds 85% by mass), which contains ester groups (at least 85%) as the dominant function and suitable treatment, and which, when stretched by 50% and released, durably and rapidly reverts substantially to its unstretched length.

[27] 16 CFR 303.7(m).

[28] ISO 2076:2010(E) defines *elastolefin* or *lastol* as follows: Fibre composed of at least 95% by mass of partially cross-linked macromolecules, made up from ethylene and at least one other olefin, which, when stretched to one and a half times its original length and released, reverts rapidly and substantially to its initial length.

However, the Textile Act directs the Commission to establish the generic names of manufactured fibers.[29] Pursuant to this responsibility, the Commission cannot preapprove generic names that may be added to the ISO standard in the future. Nor can the Commission delegate its responsibility to establish fiber names to a standard setting organization such as the ISO.[30] The Commission therefore declines to propose this amendment.

(b) International Regulations

To further ease trade barriers, the comments supported harmonizing the Textile Rules with regulations of other countries. USA–ITA stated that differing national labeling requirements inhibit U.S. companies from selling textile products in international markets, and suggested that the Commission consider recognizing international labeling requirements. CAF stated that the review of the Textile Rules is an excellent opportunity for the U.S. and Canada to harmonize labeling requirements. In addition, IKEA recommended that the FTC consider European Union Regulation (EU) No 1007/2011, and ''align the US rules to the new EU regulation as much as possible, especially in regards to accepted fiber names and tolerances for fiber content.'' The comments promoting harmonization were very general and either did not discuss how the Commission should change the Textile Rules to further reduce barriers to trade, or did not discuss how specific international labeling requirements relate to the requirements of the Textile Rules or whether they are consistent with the Textile Act.

The Commission declines to propose aligning the Textile Rules more closely with EU regulations. The Rules and EU regulations already substantially overlap. Specifically, all but five of the generic fiber names for man-made fibers in the EU regulations also appear in the proposed Rules.[31] With respect to fiber tolerances (*i.e.,* permissible deviations from specified fiber percentages), the Rules already allow the same tolerance as the EU regulations for textile products containing multiple fibers.[32]

Additionally, the record does not support further harmonization. For example, it does not address whether differences between the Rules and EU regulations create problems for industry, or whether the benefits of further harmonization exceed the costs. Moreover, unlike the unanimous support for incorporating the latest ISO standard, which reflects a long-standing international consensus, further harmonization with the EU regulation was supported by only one commenter. Two comments urged greater international harmonization. One urged greater harmonization generally. The other sought increased consistency between Canadian and United States labeling. Neither, however, proposed specific changes or provided evidence regarding the problems caused by the lack of harmonization. Moreover, neither indicated whether the benefits of further harmonization would exceed the costs.

2. Trimmings and Ornamentation

The Textile Act and Rules exempt trimmings and *ornamentation* from the fiber content disclosure requirement under certain circumstances,[33] and require that the fiber content disclosure state that it does not apply to trimmings or *ornamentation*.[34] Six comments stated that the Rules relating to trimmings and *ornamentation* overlap and create confusion.[35] These comments proposed four amendments and a clarification. The Commission addresses each below.

First, Consumer Testing Laboratories recommended that the Commission define ''minor proportion'' in the description of trimmings[36] because ''the challenge for the industry is in determining what is considered minor proportion.'' However, the comment did not propose any particular definition, and it is the experience of the Commission that the absence of a definition of this term has not posed significant problems. Furthermore, the limited inquiries received by the Commission regarding this phrase indicate that its application to particular textile products is fact-specific, and that the phrase allows necessary flexibility. In addition, none of the other comments urged the Commission to address this issue. Therefore, the Commission declines to propose amending this section to define ''minor proportion.'' The Commission notes that interested parties may seek advice from Commission staff, or consult educational materials published by the Commission.

Second, USA–ITA recommended that the Commission amend section 303.12 to clarify that elastic material is not a ''finding'' if it exceeds 20 percent of the surface area of a household textile article. The Commission, however, finds that section 303.12 is sufficiently clear. Under section 303.12, trim clearly includes both ''findings'' and certain elastic material that does not exceed 20 percent of the surface area.[37] Thus, the Rules are clear that elastic material is not a ''finding'' or any other type of trim if it exceeds 20 percent of the surface area. In addition, the comments did not present any evidence that the provision has resulted in general confusion. The Commission therefore declines to propose this amendment.

Third, USA–ITA advocated amending the Rules to eliminate the fiber content

[29] 15 U.S.C. 70e(c).

[30] Moreover, the **Federal Register** mandates that all materials to be incorporated by reference in regulatory text must be specifically identified by title, date, edition, author, publisher, and identification number of the publication. Automatic incorporation into the Textile Rules of future changes to an ISO or any other industry standard would be inconsistent with this requirement. *See generally,* National Archives and Records Administration, Office of the Federal Register, ''Federal Register Document Drafting Handbook,'' ch. 6 at p. 5 (Jan. 2011 revision) available at *http://www.archives.gov/federal-register/write/handbook/chapter-6.pdf.*

[31] The EU regulations recognize the following generic fiber names which do not appear in either section 303.7 or the ISO standard: *protein, polycarbamide, polyurethane, trivinyl,* and *polypropylene/polyamide bicomponent.* However, ISO 2076:2010(E) includes *polypropylene* and *polyamide* as separate generic fiber names.

[32] The Commission lacks the authority to reconcile the Rules with the EU regulations on tolerances for products containing a single fiber. The Textile Act authorizes the Commission to set tolerances only for products that contain multiple fibers. 15 U.S.C. 70b(b)(2). Section 303.43 of the Rules (Fiber content tolerances) implements this statutory provision, and provides that products containing more than one fiber are not misbranded if the fiber content does not deviate from the stated percentages by more than 3% of the total fiber weight.

EU regulations allow the same tolerance for multi-fiber textile products. *See* EU regulation No. 1007/2011, Article 20 (Tolerances), paragraph 3. Unlike the Rules, the EU regulations also allow a tolerance of 2–5% even when products have labels indicating that they consist of a single fiber. *See* EU regulation No. 1007/2011, Article 7 (Pure textile products), paragraph 2.

[33] Section 303.12 exempts trimmings that consist of decoration or elastic findings if they do not exceed 15 or 20 percent, respectively, of the product's surface area. Section 303.26 exempts *ornamentation* from the fiber content disclosure requirement if it does not exceed 5% of the total fiber weight of the product. As long as no representation is made about the fiber content of the trimmings or *ornamentation,* a fiber content disclosure is not required under these circumstances.

[34] Specifically, section 303.12 requires that the fiber content disclosure for a product containing exempted trimmings include a statement that the disclosure is ''exclusive of decoration'' or ''exclusive of elastic.'' Similarly, section 303.26 requires that the fiber content disclosure for a product containing exempted *ornamentation* include a statement that the disclosure is ''exclusive of ornamentation.''

[35] Bureau Veritas (9), Consumer Testing Laboratories (12), USA–ITA (14), AAFA (17), CAF (19), and NRF (20).

[36] Section 303.12(a) of the Rules provides, in part, that trimmings may include elastic materials and threads inserted or added to the product *in minor proportion* for holding, reinforcing or similar structural purposes.

[37] 16 CFR 303.12(b).

disclosure for embroidery or other decoration on the interior of garments. Section 303.12(a) does not require a fiber content disclosure for decorative trim, whether applied by embroidery, overlay, applique, or attachment; or decorative patterns or designs which are an integral part of the fabric if the decorative trim or decorative pattern or design does not exceed 15 percent of the surface area of the article. If the embroidery or decoration exceeds this threshold, consumers may well regard the fiber content as material regardless of where it appears in the product. USA–ITA did not present any evidence showing otherwise. The Commission therefore declines to propose this amendment.

Fourth, NRF stated that when a textile product contains trimmings, elastic, and *ornamentation,* separately disclosing that each of these parts are excluded is excessive and does not provide meaningful information. NRF therefore recommended that the Commission amend the Rules to require only one statement. The Commission declines to propose this amendment because the Rules do not mandate the repetition of the phrase ''exclusive of'' (*e.g.,* ''exclusive of elastic,'' ''exclusive of ornamentation'') as NRF suggests. Rather, the Rules do not prohibit and therefore already allow such disclosures to be made in one statement (*e.g.,* ''exclusive of elastic and ornamentation'').[38]

Fifth, Bureau Veritas stated that where textile decoration is made of the same fiber blend as the fabric to which it is attached, although in different proportions, requiring the phrase ''exclusive of decoration'' may be unwarranted. Bureau Veritas requested that the FTC clarify the reason for using ''exclusive of decoration'' in that instance. The Commission notes that the disclosure is necessary because, if the decoration's fiber content differs in proportions from the fabric's fiber content, the fiber content disclosure for the fabric would not accurately describe the decoration's or the garment's fiber content. However, when the fabric's fiber content is the same as the decoration's fiber content, the Commission agrees that the Rules would not require the ''exclusive of decoration'' statement. The Commission proposes amending section 303.12 to clarify this point.

Although it declines to propose some of these suggested changes, the Commission proposes amending section 303.12 to clarify when the Textile Act and Rules exempt trimmings from fiber content disclosures. As described above, section 303.12 currently describes trimmings and the conditions for exempting trim from disclosure requirements, but does not expressly state that trim is generally exempt. The Commission proposes amending section 303.12 to remedy this omission.

Specifically, the Commission proposes amending section 303.12 to clarify that: (1) Section 12 of the Textile Act exempts trimmings; (2) exempt trimmings do not include decorative trim, decorative patterns and designs, and elastic material in findings that exceed the surface area thresholds described later in section 303.12; and (3) if the fiber content of exempt trimmings consisting of decorative trim or decoration differs from the fabric's fiber content, the fiber content of the fabric shall be followed by the statement ''exclusive of decoration.''

Finally, as recommended by AAFA, the Commission staff will continue to provide advice and educational materials on how to properly label products with decorative trim and *ornamentation.*

3. Disclosure Requirements Applicable to Hang-Tags and Advertisements

The Rules allow disclosure of non-deceptive fiber trademarks in conjunction with the generic name of each such fiber, and address how labels disclose these fiber trademarks. In particular, section 303.17(b) provides that a label using a generic name or a fiber trademark must disclose full and complete fiber content the first time the generic name or fiber trademark appears on the label. Similarly, sections 303.41 and 303.42 address fiber content disclosures in advertising, including point-of-sale advertising. These sections require a fiber content disclosure, including the generic name of the fiber, in advertising that uses a fiber trademark.

The joint comment of eight trade associations urged the Commission to modify the Rules to allow the use of hang-tags and other point-of-sale (''POS'') materials relating to fiber trademarks and performance without requiring disclosure of full fiber content information.[39] The joint comment did not urge the Commission to amend any particular section of the Rules. However, two of the eight trade associations also submitted a separate comment urging the Commission to amend section 303.17 to address this issue.[40]

The joint comment and AAFA stated that the requirement that a full fiber content disclosure be made whenever a fiber trademark is used on a label (*e.g.,* on hang-tags) is unnecessary for consumers and a burden on fiber producers. AAFA stated that requiring fiber percentages on hang-tags is redundant since the information is mandated on the required textile label. The joint comment, AAFA, and USA–ITA stated that fiber manufacturers often create hang-tags to provide important information about the performance characteristics and attributes of their fibers (*e.g.,* the fiber's ability to stretch, its recycled content, the UV protection it provides, its moisture management characteristics, and its antimicrobial properties). However, fiber manufacturers may not know the final composition of the fabric or garment made with their fibers at the time they create these hang-tags. The final composition of the fabric or garment is determined by fabric manufacturers and apparel assemblers.

Therefore, the comments asserted that section 303.17 inhibits them from creating hang-tags to provide consumers with important fiber performance information. Instead of requiring a full fiber content disclosure, the comments recommended that the Textile Rules prohibit deceptive representations about fiber content on hang-tags and POS materials.[41]

The Commission agrees. Section 303.17(b) may well discourage the non-deceptive use of fiber trademarks and truthful fiber performance representations on hang-tags. Furthermore, the Commission does not see any reason to prevent fiber, fabric, or garment manufacturers from creating hang-tags to provide consumers with truthful non-deceptive information, provided the product has a label with full fiber content information as required by the Act and the Rules. Allowing such hang-tags could also lower compliance costs because the tags would not have to include the full fiber content information. The Commission proposes to amend section 303.17(b) accordingly.

The Commission notes, however, that under some circumstances hang-tags without full fiber content information might mislead consumers if consumers mistakenly believe that the hang-tag provides full fiber content information.

[38] Furthermore, when a textile product has a component or feature that falls under the description of trimmings under section 303.12 and the definition of *ornamentation* under sections 303.1(q) and 303.26, nothing in the Rules prohibits making a single disclosure ''exclusive of decoration'' or ''exclusive of ornamentation.''

[39] Joint comment (18).

[40] AAFA (17) and USA–ITA (14).

[41] Joint comment (18), AAFA (17), NTA (15), USA–ITA (14), C&R (6).

For example, a consumer reading a garment hang-tag with the trademark for a rayon fiber might incorrectly conclude that the product consists entirely of rayon.

To address this concern, the Commission proposes amending section 303.17(b) to provide that hang-tags stating a fiber generic name or trademark must disclose clearly and conspicuously that the hang-tag does not provide the product's full fiber content unless the product's full fiber content is disclosed on the hang-tag or if the product is entirely composed of that fiber. Proposed section 303.17(b) provides two examples of compliant disclosures: ''This tag does not disclose the product's full fiber content'' and ''See label for the product's full fiber content.''

The joint comment also proposed that the Commission amend the rules to allow POS materials other than hang-tags to disclose fiber trademarks and performance without requiring disclosure of full fiber content information. However, the Textile Act requires that any written advertisement used to promote, sell or offer the product for sale disclose the product's full fiber content (although it need not disclose fiber percentages).[42] Therefore, the Commission does not propose to amend sections 303.41 or 303.42 to allow POS advertising to disclose fiber trademarks and performance without requiring a fiber content disclosure.[43]

Apart from the absence of statutory authority, the Commission notes that practical considerations warrant different treatment of hang-tags and advertisements. Hang-tags are affixed to the product, and likely are in relatively close proximity to the required labels disclosing the product's full fiber content. Therefore, a consumer examining a textile fiber product could read any labels and hang-tags at the same time the consumer considers purchasing the product. Because the required label disclosing the product's full fiber content is, like the hang-tag, affixed to the product, there is no need for, and the Act does not require, the hang-tag to disclose the product's full fiber content with, or without, the fiber percentages.

In contrast, advertisements not affixed to the product have no such likely proximity to the product. A consumer reviewing such advertisements without access to the product would not necessarily be able to review any labels disclosing the product's full fiber content at the same time the consumer considers the advertisements.

4. Clarifications of Sections Relating to ''Virgin'' or ''New'' Fibers and Disclosures in Advertising

Based on informal inquiries received over the years, the Commission proposes clarifying sections 303.35, 303.41, and 303.42. None of the proposed clarifications involve a substantive change.

(a) New or Virgin Fiber

Section 303.35 states that the terms ''virgin'' or ''new'' should not be used to describe a product or any fiber or part thereof when the product or part so described is not wholly virgin or new. Although this section governs descriptions of any ''product, or any *fiber* or part thereof,'' (emphasis added), it only expressly allows the use of the terms ''virgin'' or ''new'' in connection with ''the product or part so described,'' not the ''fiber.''[44] In other words, this provision literally prohibits truthful fiber content claims for virgin or new fiber. Prohibiting such truthful claims does not advance the goals of the Textile Act or protect consumers from deception, and prohibiting such claims was not the Commission's intent when it promulgated this provision.

Accordingly, the Commission proposes to amend section 303.35 by adding the word ''fiber'' as set forth in section X below so that it states that the terms virgin or new shall not be used when the product, *fiber* or part so described is not composed wholly of new or virgin fiber.

(b) Advertising Disclosures

Section 303.41(a) provides that the use of a fiber trademark in an advertisement shall require a full disclosure of the fiber content information at least once in the advertisement. In other words, the use of a fiber trademark triggers the Rule's fiber content disclosure. In contrast, this section does not require a full disclosure of fiber content information when a generic fiber name is used. This distinction conflicts with the Act, which requires such a disclosure in advertisements that disclose or imply fiber content.[45] Accordingly, to conform the Rules to the Act, the Commission proposes to amend section 303.41(a) to state that the use of a fiber trademark or a generic fiber name in an advertisement shall require a full disclosure of the fiber content information required by the Act and regulations at least once in the advertisement.

Section 303.42(a) also addresses the content and format of fiber disclosures in advertising. This provision implements the Textile Act's requirement that written textile fiber product advertisements disclosing or implying the presence of a fiber also disclose the product's full fiber content, ''except that the percentages of the fiber present in the textile fiber product need not be stated.''[46] Section 303.42 implements this requirement but fails to explicitly state that advertising need not state the fiber percentages. Accordingly, the Commission proposes to amend the second sentence in section 303.42(a) by adding the following phrase: ''except that the advertisement need not state the percentage of each fiber.''

B. Country-of-Origin Disclosures

Section 303.33 effectuates the Textile Act's requirement that textile fiber products have labels disclosing the country where they were processed or manufactured. Section 303.33(a) provides sample disclosures for products completely made in the United States, products made in the United States using imported materials, and products partially manufactured in a foreign country and partially manufactured in the United States.

For the purpose of determining where an imported product was processed or manufactured (*i.e.,* the country of origin), section 303.33(d) provides that the country where the imported product was principally made shall be considered to be the country where such product was processed or manufactured. It also provides that further work or material added to the product in another country must effect a basic change in form to render such other country the place where such product was processed or manufactured.

USA–ITA urged the Commission to consider revising section 303.33(d) to state that the country where imported

[42] 15 U.S.C. 70b(c) (''a textile fiber product shall be considered to be falsely or deceptively advertised if any disclosure or implication of fiber content is made in any written advertisement which is used to aid, promote, or assist directly or indirectly in the sale or offering for sale of such textile fiber product'' unless the fiber content disclosure ''is contained in the heading, body, or other part of such written advertisement, except that the percentages of the fiber present in the textile fiber product need not be stated'').

[43] Although hang-tags ordinarily constitute advertising, the Textile Act distinguishes between a ''stamp, tag, label, or other means of identification'' affixed to the product and a ''written advertisement.'' Each product must have a ''stamp, tag, label, or other means of identification'' that discloses the full fiber content, but in contrast to written advertisements, the Act does not require that each such ''tag'' or ''label'' make a full fiber content disclosure. *See* 15 U.S.C. 70b(b) and (c).

[44] For example, a product or part containing 50% new fibers could not be described as containing 50% ''new'' fibers because the product or part is not composed wholly of such fibers.

[45] *See* 15 U.S.C. 70b(c).

[46] *See* 15 U.S.C. 70b(c).

products were processed or manufactured (*i.e.,* country of origin) is determined under the trade laws (*i.e.,* Customs laws) requiring country-of-origin labeling on imported products. USA–ITA argued that there is a conflict between the very detailed trade laws, specifically 19 U.S.C. 3592, and the more general country-of-origin rule in section 303.33(d).

The Commission recognized the interplay between the Rules and the Customs laws when it first promulgated the Rules in 1959.[47] Indeed, the Rules state that ''[n]othing in this rule shall be construed as limiting in any way'' the disclosures required by ''any Tariff Act of the United States or regulations prescribed by the Secretary of the Treasury.''[48] In 1985, the Commission reiterated this point, stating:

> In the past, regulations under the Textile Act have paralleled the regulations issued by Customs . . . To the maximum extent consistent with the legislative intent, the Commission intends the final regulations for the disclosure of the country of origin of imported textile . . . products . . . to be construed in a manner consistent with Customs regulations.[49]

Further, in 1998, to address an arguable inconsistency with certain Customs rulings implementing Section 334 of the Uruguay Round Agreements Act (''URAA''),[50] the Commission amended section 303.33 to add clarifying examples of country-of-origin disclosures.[51] In doing so, the Commission said that country-of-origin disclosures must comply with the requirements of both Commission and Customs laws and regulations.

Although the Commission has repeatedly noted its intent to ensure consistency between section 303.33 and the Customs laws, the trade laws and regulations applicable to textile fiber products have changed significantly. For example, in 1959, Customs regulations on marking imported products provided simply that the country of origin is the country where the product was first manufactured or substantially transformed.[52]

The Rules follow a nearly identical approach to determining the origin of imported products even though they do not use identical terminology. However, Customs no longer uses ''substantial transformation'' to determine the origin of many imported textile products. Rather, the Customs law now contains detailed rules for determining the country of origin of imported textile products.[53]

Therefore, the Commission agrees that it should update section 303.33(d) and (f) to better account for current Customs country-of-origin regulations and the fact that Customs is now part of the Department of Homeland Security rather than the Department of the Treasury. Accordingly, the Commission proposes to update and clarify section 303.33(d) to state that an imported product's country of origin as determined under the laws and regulations enforced by Customs shall be the country where the product was processed or manufactured. The Commission also proposes to update section 303.33(f) by dropping the outdated reference to the Treasury Department and instead refer to any Tariff Act and the regulations promulgated thereunder. These amendments would revise the Rules to clearly reflect the Commission's longstanding policy of ensuring the consistency of the Textile Rules and Customs regulations and address USA–ITA's concerns.[54]

C. E-Commerce and Textile Guaranties

The Rules already apply to and specifically address electronic commerce by, for example, defining the terms *mail order catalog* and *mail order promotional material* to include materials disseminated by electronic means.[55] Nonetheless, NRF urged the Commission to amend the Rules to more effectively address certain aspects of electronic commerce and to modify the provisions applicable to guaranties. To address these concerns, the Commission proposes amending the definition of the terms *invoice* and *invoice or other paper* in section 303.1(h) and the guaranty provisions in sections 303.36, 303.37, and 303.38.

1. *Invoice or other paper*

NRF explained that businesses routinely send purchase orders, invoices, and related documents electronically, and that the product ordering and fulfillment process has become entirely electronic. Therefore, NRF recommended modifying the definition of *invoice or other paper* in section 303.1(h) to better address the increasing volume of electronic business, and ensure that those engaging in such business can comply fully with the Rules. Specifically, NRF recommended modifying the definition as follows (proposed changes in underline):

> The terms *invoice* and *invoice or other paper* mean an account, order, memorandum, list, or catalog, which is issued to a purchaser, consignee, bailee, correspondent, agent, or any other person, in writing or in some other form capable of being read *or interpreted electronically* and preserved in a tangible *or electronic form,* in connection with the marketing or handling of any textile fiber product transported or delivered to such person.

The Commission finds this proposal problematic because the phrase ''or interpreted electronically'' is ambiguous. The proposal does not indicate to what extent an invoice or other document capable of electronic interpretation could be read and understood by an individual responsible for complying with the Textile Act and Rules or how the electronic interpretation of invoices squares with the affirmative responsibility of buyers

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[47] In that year, the pertinent section was 303.33(c). That text has remained unchanged. *See Federal Trade Commission: Part 303—Rules and Regulations Under the Textile Fiber Products Identification Act,* 24 FR 4480, 4485 (June 2, 1959).

[48] Like paragraph (d), paragraph (f) remains unchanged since 1959.

[49] *Federal Trade Commission: Amendment to Rules and Regulations Under the Wool Products Labeling Act of 1939 and Textile Fiber Products Identification Act, Notice of Final Rulemaking,* 50 FR 15100 at 15101 (Apr. 15, 1985). This Notice compared the Customs regulations in 19 CFR 134 (1984) to 16 CFR 303.33 (1984).

[50] 19 U.S.C. 3592.

[51] *Federal Trade Commission: Rules and Regulations Under the Textile Fiber Products Identification Act, the Wool Products Labeling Act, and the Fur Products Labeling Act; Final Rule,* 63 FR 7508 at 7512–13 (Feb. 13, 1998). Specifically, the Commission explained that the URAA provides that the country of origin of certain categories of textiles (flat goods such as sheets, towels, comforters, handkerchiefs, scarves, and napkins) is the country where the fabric was created rather than the country where the fabric is used to manufacture the final product. As a result, identifying such products as having imported fabric, without identifying the fabric's country of origin, would arguably comply with the Textile Rules but would not comply with the Customs laws. The Commission stated that Commission staff had met with Customs staff, as well as industry representatives, and that any apparent inconsistency had been resolved. The Commission further stated that a U.S. manufacturer can comply with both the Customs and Textile Rules requirements by identifying the country of origin of the imported fabric and the fact that the final product was made in the United States (*e.g.,* ''scarf made in USA of fabric made in China''). *Id.* at 7512.

[52] The regulation stated: ''The country of production or manufacture shall be considered the country of origin. Further work or material added to an article in another country must affect a substantial transformation in order to render such other country the 'country of origin' within the meaning of this section.'' 19 CFR 11.8(c)(1953).

[53] *See, e.g.,* 19 U.S.C. 3592 and 19 CFR 102.21 and 102.22.

[54] The Commission also notes that, under some circumstances, the Act and the Rules require disclosures in addition to but not in conflict with those required by Customs. For example, if an imported product is partially manufactured in the United States, section 303.33(a)(4) requires the label to disclose the manufacturing processes that occurred in the foreign country and in the United States. This provision lists several examples of such disclosures, such as ''Made in [foreign country], finished in USA.''

[55] 16 CFR 303.1(u).

and sellers to monitor and ensure that they comply with the Textile Rules.

The Commission notes, however, that further clarification that invoices and other paper can be preserved electronically may be warranted.[56] The Commission, therefore, proposes to amend section 303.1(h) to: (1) Replace the word ''paper'' with the word ''document''; (2) state explicitly that such documents can be issued electronically; and (3) acknowledge that ESIGN, 15 U.S.C. 7001 *et seq.,* allows for the preservation of records ''in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise.''[57] This amendment should address NRF's concerns.[58]

2. E-Commerce and Separate Guaranties

The Act provides that a business can avoid liability for selling a misbranded textile product if it received in good faith a guaranty that the product is not misbranded from a supplier or agent residing in the United States.[59] NRF recommended adding the definition of *electronic agent* presently used in the Uniform Commercial Code[60] and using the term in section 303.36 (Form of separate guaranty) to allow businesses to accept guaranties using electronic agents.[61] The definition proposed by NRF for *electronic agent* specifically provides that the electronic acceptance of purchase orders would occur ''with or without review or action by an individual.'' NRF also urged the Commission to amend section 303.36 to allow numeric or alpha-numeric codes to satisfy existing name and address requirements for separate guaranties. The Commission declines to propose these amendments for the reasons explained below.

The Commission notes that the Rules do not prohibit or discourage the electronic communication of textile guaranties. The Rule provisions relating to guaranties are not dependent on the mode of their communication. Instead, the Rules focus on the substance of the guaranties. It is unclear how the use of an electronic agent, which by definition may exclude individuals, adequately ensures that buyers and sellers will monitor compliance with the Rules, or how a buyer using an electronic agent can receive a guaranty in good faith so that it can rely on the guaranty.

NRF also recommended allowing numeric or alpha-numeric codes to satisfy existing name and address requirements presently in section 303.36.[62] This is not necessary because section 303.36 does not require written signatures on separate guaranties and specifically provides that the printed name and address will suffice to meet the signature and address requirements. In addition, nothing in section 303.36 prohibits electronic signatures. Comments have not presented any evidence showing that these alternatives are insufficient, impose significant costs on businesses, or that making the proposed change would decrease costs on businesses. Thus, this provision of the Rules appears to provide sufficient flexibility for compliance and the Commission does not see any reason to revise it. The Commission, seeks comment on these issues.

3. Prescribed Forms for Continuing Guaranties

Section 303.37 provides a prescribed form of a continuing guaranty a seller provides to a buyer and section 303.38 provides a prescribed form for a continuing guaranty a seller files with the Commission. Both require the entity providing a textile guaranty to sign the guaranty under penalty of perjury. NRF recommended making the guaranty form in section 303.37 optional and eliminating the requirement that the entity providing the guaranty sign under penalty of perjury. The Commission declines to propose the first amendment, but proposes to require that guarantors certify guaranties rather than sign them under penalty of perjury.

First, NRF recommended making the form of continuing guaranty from seller to buyer in section 303.37 optional to allow businesses to adapt the form to electronic processes without the obligation to revert to paper documents and signatures. However, NRF did not present any evidence showing that the prescribed form is not adaptable to electronic communications, including electronic signatures. The prescribed form may be sent electronically, and there is no provision in the Textile Rules requiring written signatures as opposed to electronic signatures, as sanctioned by ESIGN.[63] The Commission therefore declines to make the prescribed form optional. The Commission notes that the form is brief and consists only of a two sentence certification and a signature block stating the date, location, and name of the business making the guaranty, as well as the name, title, and signature of the person signing the guaranty under penalty of perjury.

Second, NRF recommended that the Commission eliminate the penalty of perjury language for continuing guaranties. It argued that such a requirement inappropriately introduces the criminal elements of perjury into private contracts and that the person providing the attestation cannot attest to the truth of labels and invoices in the future.

Although swearing under penalty of perjury in private agreements is not unusual,[64] the Commission notes that

[56] In 1998, the Commission modified the definition of *invoice or other paper* to clarify that such documents could be ''in writing or in some other form capable of being read and preserved in a tangible form.'' The **Federal Register** notice announcing the revision stated that the revision was meant ''to recognize that these documents may now be generated and disseminated electronically.'' 63 FR 7508 at 7514 (Feb. 13, 1998). The comments, however, show that further clarification may be warranted.

[57] 15 U.S.C. 7001(d)(1).

[58] Sections 303.21, 303.31, 303.36, 303.38, and 303.44 currently contain the phrase *invoice or other paper.* The Commission proposes to change the phrase to *invoice or other document* in each of these sections.

[59] Section 7h(a) of the Textile Act provides: ''No person shall be guilty of an unlawful act under section 70a of this title if he establishes a guaranty received in good faith, signed by and containing the name and address of the person residing in the United States by whom the textile fiber product guaranteed was manufactured or from whom it was received, that said product is not misbranded or falsely invoiced under the provisions of this subchapter.''

[60] NRF urged the Commission to add a definition of *electronic agent* to section 303.1 to account for the use of electronic communications in the ordering and fulfillment processes. NRF proposed the definition of *electronic agent* used in section 2–211 of the Uniform Commercial Code:

Electronic agent means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, with or without review or action by an individual.

[61] Specifically, NRF recommended amending section 303.36 to describe an electronic guaranty process in which an individual or electronic agent places an order with a guarantor via transmission of an electronic purchase order that requests goods subject to specific terms and conditions including compliance with the Textile Fiber Products Identification Act and its regulations. An individual or electronic agent acting on behalf of the guarantor would confirm that the guarantor will fulfill the items and submits electronic confirmation of the same, and the guarantor would fulfill the order that is then accepted by the purchaser.

[62] In connection with this recommendation, NRF also recommended that the Commission amend the ''Note'' in section 303.36(a)(2) to allow the use of identifiers commonly used throughout the retailing industry in place of signatures and to expressly recognize that electronic signatures are permitted.

[63] The word ''signature'' appears in section 303.36 and 303.37, and in the prescribed form for continuing guaranties filed with the Commission that appears as part of section 303.38. None of these provisions require written signatures or prohibit electronic signatures.

[64] *See J. Geils Band Employee Benefit Plan* v. *Smith Barney Shearson, Inc.,* 76 F.3d 1245 (1st Cir. 1996)(Court upheld summary judgment in part because appellant failed to rebut acknowledgment of receipt of investment prospectuses evidenced by an agreement executed under penalty of perjury).

swearing to future events is problematic and may present enforcement issues. In addition, the Commission recognizes that many people who intend to comply with the Rules may be understandably reluctant to swear to a future event, and continuing guaranties address future shipments. Accordingly, the Commission proposes amending section 303.37 to eliminate the penalty-of-perjury language.

However, continuing guaranties must provide sufficient indicia of reliability to permit buyers to rely on them on an ongoing basis. The perjury language was included to address this concern. Therefore, instead of requiring guarantors to swear under penalty of perjury, the Commission proposes requiring them to acknowledge that providing a false guaranty is unlawful, and to certify that they will actively monitor and ensure compliance with the Textile Act and Rules. This requirement should focus guarantors' attention on, and underscore, their obligation to comply, thereby increasing a guaranty's reliability. However, it would not impose additional burdens on guarantors because they would simply be acknowledging the Textile Act's prohibition against false guaranties [65] and certifying to the monitoring that they already must engage in to ensure that they do not provide false guaranties. In addition, the required statements would benefit recipients of guaranties by bolstering the basis of their good-faith reliance on the guaranties. Finally, the acknowledgement and certification may facilitate enforcement action against those who provide false guaranties.

To further ensure the reliability of continuing guaranties, the Commission also proposes requiring them to be renewed annually. Annual renewal should encourage guarantors to take regular steps to ensure that they remain in compliance with the Act and Rules over time and thereby increase the guaranties' reliability. This requirement would not likely impose significant costs because it involves the sending of a relatively simple one-page form including information very similar, if not identical, to that provided on the guarantor's last continuing guaranty form.

Accordingly, the Commission proposes amending section 303.37, relating to the requirements for continuing guaranties from sellers to buyers, to provide that the guarantor must: (1) Guaranty that all textile fiber products now being sold or which may hereafter be sold or delivered to the buyer are not, and will not be, misbranded nor falsely nor deceptively advertised or invoiced; (2) acknowledge that furnishing a false guaranty is an unlawful unfair and deceptive act or practice pursuant to the Federal Trade Commission Act; and (3) certify that it will actively monitor and ensure compliance with the Textile Act and Rules during the duration of the guaranty. The proposed amendment would also remove the requirement that guarantors sign under penalty of perjury and provide that guaranties are effective for one year instead of being effective until revoked.

The Commission also proposes to revise FTC Form 31–A set forth in section 303.38 so that it is consistent with the guaranty provisions as amended. Because this form is also used to provide guaranties under the Fur and Wool Acts and references these Acts,[66] and there is no reason to treat Fur and Wool guaranties differently than Textile guaranties, the Commission proposes to revise the form's references to Fur and Wool guaranties in the same way.[67]

4. Alternative to Textile Act Guaranty

The Textile Act, 15 U.S.C. 70h, authorizes textile guaranties from persons ''residing in the United States by whom the textile fiber product guaranteed was manufactured or from whom it was received.'' [68] Thus, businesses that buy from manufacturers or suppliers that have no representative residing in the United States cannot obtain a guaranty.

USA–ITA estimated that more than 90 percent of apparel products are imported. Although USA–ITA stated that it did not have a reliable estimate of the percentage imported directly by retailers, it asserted that the increase in imports makes it difficult for businesses that buy from manufacturers or suppliers that do not have a U.S. representative to obtain a guaranty.

Because many retailers now regularly rely on global supply chains, NRF recommended that the Commission adopt an alternative guaranty for such businesses. Specifically, NRF recommended that the Commission allow such businesses to rely on compliance representations from foreign manufacturers or suppliers when: (1) The businesses do not embellish or misrepresent the representations; (2) the textile products are not sold as private label products; and (3) the businesses have no reason to know that the marketing or sale of the products would violate the Act or Rules.

These comments have merit. Changes in the textile industry resulting in increased imports mean that more and more businesses cannot obtain guaranties. Based on its enforcement experience, the Commission finds it in the public interest to provide protections for retailers that: (1) Cannot legally obtain a guaranty under the Act; (2) do not embellish or misrepresent claims provided by the manufacturer related to the Act or Rules; and (3) do not market the products as private label products; unless the retailers knew or should have known that the marketing or sale of the products would violate the Act or Rules. Such protections provide greater consistency for retailers regardless of whether they directly import products or use third-party domestic importers. Accordingly, on January 3, 2013, the Commission announced an enforcement policy statement providing that it will not bring enforcement actions against retailers that meet the above criteria.[69] This statement addresses the concerns raised by NRF.

D. Coverage and Exemptions From the Act and Rules

Section 303.45 (Exclusions from the Act) has been the source of some confusion. The provision is phrased in terms of textile products excluded from operation of the Textile Act. However, instead of listing the excluded products, the provision lists 23 textile product categories that are not excluded. It then identifies the excluded product categories.

To address this issue without changing the substance of this section, the Commission proposes amending the section so that paragraph (a) identifies

[65] The Textile Act provides that furnishing a false guaranty ''is unlawful, and shall be an unfair method of competition, and an unfair and deceptive act or practice'' under the FTC Act. 15 U.S.C. 70h(b).

[66] Section 301.48(a)(3) of the Fur Rules and section 300.33(b) of the Wool Rules provide that the prescribed form for continuing guaranties filed with the Commission is found in section 303.38(b) of the Textile Rules. *See also* Wool Products Labeling Act of 1939, 15 U.S.C. 68 *et seq.* and the Fur Products Labeling Act, 15 U.S.C. 69 *et seq.*

[67] The comment that favored making the section 303.37 guaranty form optional did not ask the Commission to make use of form 31–A optional. Therefore, the Commission does not have any reason to believe that submitting continuing guaranties to the Commission using the form imposes unreasonable costs. Moreover, the form facilitates efficient processing of the continuing guaranties submitted to the Commission because it enables Commission staff to quickly identify missing information and advise submitters.

[68] 15 U.S.C. 70h provides that a person relying on a guaranty, received in good faith, that a product is not misbranded or falsely invoiced from a guarantor residing in the United States will not be liable under the Act.

[69] *See Enforcement Policy Regarding Certain Imported Textile, Wool, and Fur Products* at *http://www.ftc.gov/opa/2013/01/eps.shtm.*

the textile fiber product categories subject to the Act and regulations, unless excluded from the Act's requirements in paragraph (b). New paragraph (b) provides that all textile fiber products other than those identified in paragraph (a) are excluded, as well as the exempted products identified in paragraph (b). The Commission also proposes revising current paragraphs (b) and (c) to reflect the above change and redesignating them as paragraphs (c) and (d), respectively.

V. Other Amendments the Commission Declines to Propose

Several comments urged the Commission to address the disclosure of a business's identity, the provisions implementing the RN program, and disclosures in multiple languages. The Commission declines these requests either because the record does not include sufficient evidence to support them or the Commission lacks the authority to adopt them.

A. Proposals to Provide Additional Options for Identifying Businesses in Required Disclosures and To Modify the RN Program

Several comments supported allowing businesses to use Canadian registered numbers as an alternative to U.S. registered numbers.[70] AAFA stated that the use of identifying numbers approved by other countries would reduce costs, advance harmonization, and facilitate trade. NRF stated that recognizing the use of both Canadian CA numbers and U.S. RN numbers would support the free flow of products between the U.S. and Canada and reduce compliance costs for many U.S. retailers. USA–ITA stated that allowing alternative identifiers would make it easier to develop a label that meets the requirements of multiple jurisdictions.[71]

These proposals appear to have merit; however, the Textile Act provides only for the use of identifying numbers issued by the Commission.[72] Thus, the Commission lacks the authority to amend the Rules to allow businesses to identify themselves on labels using numbers issued by other nations. In addition, the comments favoring this amendment did not provide any evidence on the costs and benefits of the proposal.[73]

Two comments addressed the deceptive use of RN numbers. Specifically, Karen Lunde and Classical Silk, Inc., noted that there is no penalty when someone uses another company's RN number. Lunde recommended that the Commission amend the Rules to impose legal consequences, such as monetary fines, on companies that deceptively use RN numbers, and that the Commission take enforcement action against violators. Lunde also suggested that the Textile Rules hold retailers and wholesalers responsible for checking and verifying that RN numbers are accurate and not stolen, and allow companies to which RN numbers are issued to recover all costs in defending themselves against companies that fraudulently use RN numbers.

These comments also recommended changes to prevent the deceptive use of RN numbers. Lunde recommended requiring a signature under penalty of perjury on applications to obtain or renew numbers. Both Lunde and Classical Silk recommended that the Commission require the renewal of RN numbers every few years, in part to ensure that company addresses are regularly updated. Lunde recommended that the FTC make available a database to allow companies to check and verify that RN numbers are correct and actually are from the suppliers of the garments. Classical Silk recommended that the Commission make the date of application; the name of the person submitting and certifying the application; the title of that person; that person's email address; and the Web site URL address available to the public.

The Commission declines to propose these amendments because the Commission lacks the authority to adopt them, the record does not support them, or they are unnecessary. Section 303.20(b)(1) already provides that ''Registered identification numbers shall be used only by the person or concern to whom they are issued, and such numbers are not transferable or assignable.'' The Commission has the authority to enforce this provision by seeking injunctive or other equitable relief from violators.[74] The Commission, however, does not have the authority under the Textile Act or the FTC Act to seek civil penalties from those who violate this provision, or to authorize businesses with RN numbers to recover all costs in defending themselves against those who use their RN numbers fraudulently.

Although the Commission has the authority to implement some of the other proposals, and they potentially could reduce the misuse of RN numbers, Lunde and Classical Silk did not provide information showing that there is a widespread problem with the unauthorized use of RN numbers or evidence on the costs and benefits of the changes to the RN program they advocated. Some of the changes, such as requiring retailers and wholesalers to check and verify RN numbers and creating or expanding RN databases, would likely increase industry compliance costs or the Commission's cost of administering the program. Others, such as identifying the person submitting an RN application and providing his or her email address, would involve disclosing information about RN applicants that the applicants may have legitimate privacy concerns about disclosing. Furthermore, it is not clear whether these changes would have any significant impact on the misuse of RN numbers identified by the two commenters. Accordingly, the Commission declines these proposals at this time.

B. The Use of Multiple Languages in Required Disclosures

The Textile Rules already allow multiple language disclosures.[75] The comments stated that allowing

[70] AAFA (17), CAF (19), NRF (20), USA–ITA (14).

[71] Prior to issuing this NPRM, the Commission's staff provided guidance stating that a business located outside the United States can comply with the business name label disclosure requirement by disclosing the business name of the textile product manufacturer or the RN or business name of a company in the United States that is directly involved with importing, distributing, or selling the product. For clarity purposes, the Commission notes here that a business located outside the United States that engages in commerce subject to the Act (*e.g.,* such as an exporter engaged in the sale, offering for sale, advertising, delivery, or transportation of a covered textile product in the United States) may also comply with this requirement by disclosing its own business name on the label. *See* 15 U.S.C. 70a and 70b(b)(3) and 16 CFR 303.16.

[72] 15 U.S.C. 70b(b)(3). *See* section 303.20 of the Rules.

[73] The Commission considered the possibility of amending the Rules to allow applicants to request specific numbers from the Commission, which would enable an applicant with a number issued by another nation to request that the Commission issue an identical number (assuming the Commission had not already issued the number to a different firm). This approach might address some of the concerns raised by the comments; however, it would also pose a significant risk of confusion to the extent that it resulted in the Commission issuing numbers that other nations or agencies had already issued to different firms. To avoid such confusion, the Commission would have to confirm that no other nation had issued the requested number to a different firm before issuing it to the applicant. Doing so would likely impose significant costs on the Commission. None of the comments suggested this approach and there is no evidence in the record supporting it.

[74] *See* 15 U.S.C. 45 and 53(b).

[75] Six comments addressed this issue: AAFA (17), Bureau Veritas (9), CAF (19), C&R (6), McNeese (4), and USA–ITA (14). C&R (6) urged the Commission to clarify whether inclusion of multiple languages is permitted, which the Commission reiterates here. Some of the comments incorrectly interpreted the Commission's request for comments relating to the use of multiple languages on labels as a proposal to prohibit the practice.

disclosures in multiple languages benefits consumers, including American consumers for whom English is not their first language.[76] AAFA and McNeese stated that multiple language labels are not confusing to U.S. consumers. The comments also stated that allowing disclosures in multiple languages benefits businesses.[77] AAFA noted that its members source and distribute products around the globe, and that it is therefore important to make the information on labels accessible for consumers in multiple markets. CAF noted that textile labels in multiple languages allow the textile industry to ''rationalize'' production and produce garments with a single labeling scheme appropriate for multiple markets. USA–ITA noted that multilingual labels create efficiencies and lower costs for those who market textile products in multiple national markets. McNeese stated that multiple language labels reduce costs for U.S. and EU textile manufacturers, and are consistent with regulatory cooperation efforts between the U.S. and the EU.

The ANPR asked whether the Commission should ''consider consumer education or other measures to help non-English-speaking consumers obtain the information that must be disclosed under the Textile Act and Rules.'' [78] Bureau Veritas stated that fiber content labels in multiple languages can be confusing and/or difficult to read, and recommended that the Commission prescribe acceptable format(s) to avoid confusion.[79] Bureau Veritas suggested two formats, one that groups required disclosures by language (*e.g.,* English disclosures together, French disclosures together), and another that combines different languages for the required disclosures (*e.g.,* __% generic fiber name in English/other language). The Commission declines to propose amending the Rules to specify particular formats for making disclosures in multiple languages. The record does not include any evidence regarding how consumers interpret labels in multiple languages, whether current disclosures using multiple languages confuse consumers, or whether any particular format for using multiple languages is superior to others. In addition, none of the comments proposed other measures to help non-English speaking consumers obtain the information disclosed pursuant to the Act and Rules. The Commission may provide additional guidance on using multiple languages in its business education materials if it obtains information enabling it to do so.[80]

VI. Request for Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 8, 2013. Write ''Textile Rules, 16 CFR part 303, Project No. P948404'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, such as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[81] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/textilerulesnprm,* by following the instruction on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Textile Rules, 16 CFR Part 303, Project No. P948404'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex G), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this NPRM and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before July 8, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

The Commission invites members of the public to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of proposed amendments to the Textile Rules. The Commission requests that comments provide factual data upon which they are based. In addition to the issues raised above, the Commission solicits public comment on the costs and benefits to industry members and consumers of each of the proposals as well as the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

[76] AAFA (17) and CAF (19).

[77] AAFA (17), CAF (19), McNeese (4), and USA–ITA (14).

[78] *See* ANPR question 20(a). Question 16 asked: ''Should the Commission modify Section 303.16(c) or consider any additional measures regarding non-required information such as the voluntary use of multilingual labels?''

[79] C&R (6) was uncertain whether multiple language disclosures were permitted and, if so, how to make such disclosures, but did not propose any particular format.

[80] Several comments urged the Commission to clarify its business education materials and to provide examples of preferred disclosure formats in advertising, including Internet advertising, and to make them available in both PDF and HTML formats. The Commission plans to do so.

[81] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Questions

1. General Questions on Amendments: To maximize the benefits and minimize the costs for buyers and sellers (including small businesses), the Commission seeks views and data on the following general questions for each of the proposed changes described in this NPRM:

(A) What benefits would a proposed change confer and on whom? The Commission in particular seeks information on any benefits a change would confer on consumers of textile fiber products.

(B) What costs or burdens would a proposed change impose and on whom? The Commission in particular seeks information on any burdens a change would impose on small businesses.

(C) What regulatory alternatives to the proposed changes are available that would reduce the burdens of the proposed changes while providing the same benefits?

(D) What evidence supports your answers?

2. Hang-tags and Fiber Content Disclosures:

(A) Would the proposed amendment to section 303.17 allowing hang-tags without full fiber content disclosures under certain circumstances affect the extent to which consumers become informed about the full fiber content of textile fiber products? If so, how?

(B) Would the proposed disclosure requirements for hang-tags not disclosing full fiber content (*i.e.,* ''This tag does not disclose the product's full fiber content'' or ''See other label for the product's full fiber content'') prevent deception or confusion regarding fiber content? If so, how? Should the Commission provide different or additional examples of the required hang-tag disclosures? If so, what?

(C) What evidence supports your answers?

3. Electronic Signatures and Guaranties:

(A) Do the Textile Rules and the proposed changes to the guaranty provisions in sections 303.36, 303.37, and 303.38 provide sufficient flexibility for compliance using electronic transmittal of guaranties? If so, why and how? If not, why not?

(B) Should the Commission revise the proposed certification requirement for continuing guaranties provided by suppliers pursuant to sections 303.37 and 303.38? If so, why and how? If not, why not?

(C) Should the Rules require those providing a continuing guaranty pursuant to sections 303.37 and 303.38 to renew the certification annually or at some other interval? If so, why? If not, why not? To what extent would requiring guarantors to renew certifications annually increase costs?

(D) What evidence supports your answers?

VII. Communications To Commissioners and Commissioner Advisors By Outside Parties

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record.[82]

VIII. Regulatory Flexibility Act Requirements

The Regulatory Flexibility Act (''RFA'')[83] requires that the Commission conduct an analysis of the anticipated economic impact of the proposed amendments on small entities. The purpose of a regulatory flexibility analysis is to ensure that an agency considers the impacts on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA[84] provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

The Commission believes that the proposed amendments would not have a significant economic impact upon small entities, although it may affect a substantial number of small businesses. The proposed amendments: (a) Clarify the Rules, including sections 303.1(h),[85] 303.12(a), 303.33(d) and (f), 303.35, 303.41(a), 303.42(a), and 303.45; (b) amend section 303.7 to incorporate the updated version of ISO 2076, thereby establishing the generic names for the manufactured fibers set forth in the current ISO standard; (c) amend section 303.17(b) to allow manufacturers and importers to disclose fiber names and trademarks and information about fiber performance on certain hang-tags affixed to textile fiber products without including the product's full fiber content information on the hang-tag; and (d) amend sections 303.36, 303.37, and 303.38 to clarify and update the Rules' guaranty provisions by, among other things, replacing the requirement that suppliers that provide a guaranty sign under penalty of perjury with a certification requirement for continuing guaranties that must be renewed every year.

In the Commission's view, the proposed amendments should not have a significant or disproportionate impact on the costs of small entities that manufacture or import textile fiber products. Therefore, based on available information, the Commission certifies that amending the Rules as proposed will not have a significant economic impact on a substantial number of small businesses.

Although the Commission certifies under the RFA that the proposed amendments would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an Initial Regulatory Flexibility Analysis to inquire into the impact of the proposed amendments on small entities. Therefore, the Commission has prepared the following analysis:

A. Description of the Reasons That Action by the Agency Is Being Taken

In response to public comments, the Commission proposes amending the Rules to respond to changed commercial practices and updated industry standards.

B. Statement of the Objectives of, and Legal Basis for, the Proposed Amendments

The objective of the proposed amendments is to clarify the Rules; incorporate the updated version of ISO 2076, thereby establishing the generic names for the manufactured fibers set forth in the current ISO standard; allow manufacturers and importers to disclose fiber names and trademarks and information about fiber performance on certain hang-tags affixed to textile fiber products without including the product's full fiber content information on the hang-tag; and clarify and update the Rules' guaranty provisions by, among other things, replacing the requirement that suppliers that provide a guaranty sign under penalty of perjury with a certification requirement that must be renewed every year. The Textile Act authorizes the Commission to implement its requirements through the issuance of rules.

The proposed amendments would clarify and update the Rules, and provide covered entities with additional labeling options without imposing significant new burdens or additional costs. For example, businesses that prefer not to affix a hang-tag disclosing a fiber trademark without disclosing the

[82] *See* 16 CFR 1.26(b)(5).

[83] 5 U.S.C. 601–612.

[84] 5 U.S.C. 605.

[85] This amendment would also require parallel revisions to sections 303.21, 303.31, 303.36, 303.38, and 303.44.

product's full fiber content need not do so. The proposal that continuing guaranty certifications expire after one year would likely impose minimal additional costs on businesses that choose to provide a guaranty. Providing a new continuing guaranty each year would likely entail minimal costs, especially if the business provides the guaranty electronically or as part of a paper invoice that it would have sent to the buyer in any event. In addition, the new guaranty would consist of a relatively simple one-page form including information very similar, if not identical, to that provided on the guarantor's last continuing guaranty form.

C. Small Entities to Which the Proposed Amendments Will Apply

The Rules apply to various segments of the textile fiber product industry, including manufacturers and wholesalers of textile apparel products. Under the Small Business Size Standards issued by the Small Business Administration, textile apparel manufacturers qualify as small businesses if they have 500 or fewer employees. Clothing wholesalers qualify as small businesses if they have 100 or fewer employees. The Commission's staff has estimated that approximately 22,218 textile fiber product manufacturers and importers are covered by the Rules' disclosure requirements.[86] A substantial number of these entities likely qualify as small businesses. The Commission estimates that the proposed amendments will not have a significant impact on small businesses because they do not impose any significant new obligations on them. The Commission seeks comment and information with regard to the estimated number or nature of small business entities for which the proposed amendments would have a significant impact.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements, Including Classes of Covered Small Entities and Professional Skills Needed to Comply

As explained earlier in this document, the proposed amendments clarify the Rules; incorporate the updated version of ISO 2076, thereby establishing the generic names for the manufactured fibers set forth in the current ISO standard; allow manufacturers and importers to disclose fiber names and trademarks and information about fiber performance on certain hang-tags affixed to textile fiber products without including the product's full fiber content information on the hang-tag; and clarify and update the Rules' guaranty provisions by, among other things, replacing the requirement that suppliers that provide a guaranty sign under penalty of perjury with a certification requirement that must be renewed every year. The small entities potentially covered by these proposed amendments will include all such entities subject to the Rules. The professional skills necessary for compliance with the Rules as modified by the proposed amendments would include office and administrative support supervisors to determine label content and clerical personnel to draft and obtain labels and keep records. The Commission invites comment and information on these issues.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed amendments. The Commission invites comment and information on this issue.

F. Significant Alternatives to the Proposed Amendments

The Commission has not proposed any specific small entity exemption or other significant alternatives, as the proposed amendments simply clarify the Rules; incorporate the updated version of ISO 2076, thereby establishing the generic names for the manufactured fibers set forth in the current ISO standard; allow manufacturers and importers to disclose fiber names and trademarks and information about fiber performance on certain hang-tags affixed to textile fiber products without including the product's full fiber content information on the hang-tag; and clarify and update the Rules' guaranty provisions by, among other things, replacing the requirement that suppliers that provide a guaranty sign under penalty of perjury with a certification requirement that must be renewed every year. Under these limited circumstances, the Commission does not believe a special exemption for small entities or significant compliance alternatives are necessary or appropriate to minimize the compliance burden, if any, on small entities while achieving the intended purposes of the proposed amendments. Nonetheless, the Commission seeks comment and information on the need, if any, for alternative compliance methods that would reduce the economic impact of the Rules on small entities. If the comments filed in response to this NPRM identify small entities that would be affected by the proposed amendments, as well as alternative methods of compliance that would reduce the economic impact of the proposed amendments on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final Rules.

IX. Paperwork Reduction Act

The Rules contain various ''collection of information'' (*e.g.,* disclosure and recordkeeping) requirements for which the Commission has obtained OMB clearance under the Paperwork Reduction Act (''PRA'').[87] As discussed above, the Commission proposes: (a) Clarifying the Rules, including sections 303.1(h),[88] 303.12(a), 303.33(d) and (f), 303.35, 303.41(a), 303.42(a), and 303.45; (b) amending section 303.7 to incorporate the updated version of ISO 2076, thereby establishing the generic names for the manufactured fibers set forth in the current ISO standard; (c) amending section 303.17(b) to allow manufacturers and importers to disclose fiber names and trademarks and information about fiber performance on certain hang-tags affixed to textile fiber products without including the product's full fiber content information on the hang-tag; and (d) amending sections 303.36, 303.37, and 303.38 to clarify and update the Rules' guaranty provisions by, among other things, replacing the requirement that suppliers provide a guaranty signed under penalty of perjury with a certification requirement for continuing guaranties that must be renewed every year.

These proposed amendments do not impose any additional significant collection of information requirements. Businesses that prefer not to affix a hang-tag disclosing a fiber name or trademark without disclosing the product's full fiber content need not do so. The proposal that continuing guaranty certifications expire after one

[86] *Federal Trade Commission: Agency Information Collection Activities; Proposed Collection; Comment Request,* 76 FR 77230 (Dec. 12, 2011).

[87] 44 U.S.C. 3501 *et seq.* The Commission recently published its PRA burden estimates for the current information collection requirements under the Rules. *See Federal Trade Commission: Agency Information Collection Activities; Proposed Collection; Comment Request,* 76 FR 77230 (Dec. 12, 2011) and *Federal Trade Commission: Agency Information Collection Activities; Submission for OMB Review; Comment Request,* 77 FR 10744 (Feb. 23, 2012). On March 26, 2012, OMB granted clearance through March 31, 2015, for these requirements and the associated PRA burden estimates. The OMB control number is 3084–0101.

[88] This amendment would also require parallel revisions to sections 303.21, 303.31, 303.36, 303.38, and 303.44.

year would likely impose minimal additional costs on businesses that choose to provide a guaranty. Providing a new continuing guaranty each year would likely entail minimal costs, especially if the business provides the guaranty electronically or as part of a paper invoice that it would have sent to the buyer in any event.

X. Proposed Rule Language

List of Subjects in 16 CFR Part 303

Advertising, Labeling, Recordkeeping, Textile fiber products.

PART 303—RULES AND REGULATIONS UNDER THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACT

■ 1. The authority citation for part 303 continues to read as follows:

Authority: 15 U.S.C. 70 et seq.

■ 2. Amend § 303.1 by revising paragraph (h) to read as follows:

§ 303.1 Terms defined.

* * * * *

(h) The terms *invoice* and *invoice or other document* mean an account, order, memorandum, list, or catalog, which is issued to a purchaser, consignee, bailee, correspondent, agent, or any other person, electronically, in writing, or in some other form capable of being read and preserved in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise, in connection with the marketing or handling of any textile fiber product transported or delivered to such person.

* * * * *

■ 3. Amend § 303.7 by revising the introductory text to read as follows:

§ 303.7 Generic names and definitions for manufactured fibers.

Pursuant to the provisions of section 7(c) of the Act, the Commission hereby establishes the generic names for manufactured fibers, together with their respective definitions, set forth in this section, and the generic names for manufactured fibers, together with their respective definitions, set forth in International Organization for Standardization ISO 2076:2010(E), ''Textiles—Man-made fibres—Generic names.'' This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute, 11 West 42nd St., 13th Floor, New York, NY 10036. Copies may be inspected at the Federal Trade Commission, Room 130, 600 Pennsylvania Avenue NW., Washington, DC 20580, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

■ 4. Amend § 303.12 by revising paragraph (a) to read as follows:

§ 303.12 Trimmings of household textile articles.

(a) Pursuant to section 12 of the Act, trimmings incorporated in articles of wearing apparel and other household textile articles are exempt from the Act and regulations, except for decorative trim, decorative patterns and designs, and elastic materials in findings exceeding the surface area thresholds described and in paragraph (b) of this section. Trimmings may, among other forms of trim, include:

(1) Rickrack, tape, belting, binding, braid, labels (either required or non-required), collars, cuffs, wrist bands, leg bands, waist bands, gussets, gores, welts, and findings, including superimposed garters in hosiery, and elastic materials and threads inserted in or added to the basic product or garment in minor proportion for holding, reinforcing or similar structural purposes;

(2) Decorative trim, whether applied by embroidery, overlay, applique, or attachment; and

(3) Decorative patterns or designs which are an integral part of the fabric out of which the household textile article is made. *Provided,* That such decorative trim or decorative pattern or design, as specified in paragraphs (a)(2) and (3) of this section, does not exceed 15 percent of the surface area of the household textile article. If no representation is made as to the fiber content of the decorative trim or decoration, as provided for in paragraphs (a)(2) and (3) of this section, and the fiber content of the decorative trim or decoration differs from the fiber content designation of the basic fabric, the fiber content designation of the basic fabric shall be followed by the statement ''exclusive of decoration.''

* * * * *

■ 5. Revise § 303.17(b) to read as follows:

§ 303.17 Use of fiber trademarks and generic names on labels.

* * * * *

(b) Where a generic name or a fiber trademark is used on any label providing required information, a full fiber content disclosure shall be made in accordance with the Act and regulations the first time the generic name or fiber trademark appears on the label. Where a fiber generic name or trademark is used on any hang-tag attached to a textile fiber product that has a label providing required information and the hang-tag provides non-required information, such as a hang-tag stating only a fiber generic name or trademark or providing information about a particular fiber's characteristics, the hang-tag need not provide a full fiber content disclosure; however, if the textile fiber product contains any fiber other than the fiber identified by the fiber generic name or trademark, the hang-tag must disclose clearly and conspicuously that it does not provide the product's full fiber content; for example:

''This tag does not disclose the product's full fiber content.''

or

''See label for the product's full fiber content.''

* * * * *

■ 6. Amend § 303.21 by revising paragraphs (a)(3) and (b) to read as follows:

§ 303.21 Marking of samples, swatches, or specimens and products sold therefrom.

(a) * * *

(3) If such samples, swatches, or specimens are not used to effect sales to ultimate consumers and are not in the form intended for sale or delivery to, or for use by, the ultimate consumer, and are accompanied by an invoice or other document showing the required information.

(b) Where properly labeled samples, swatches, or specimens are used to effect the sale of articles of wearing apparel or other household textile articles which are manufactured specifically for a particular customer after the sale is consummated, the articles of wearing apparel or other household textile articles need not be labeled if they are of the same fiber content as the samples, swatches, or specimens from which the sale was effected and an invoice or other document accompanies them showing the information otherwise required to appear on the label.

* * * * *

■ 7. Revise § 303.31 to read as follows:

§ 303.31 Invoice in lieu of label.

Where a textile fiber product is not in the form intended for sale, delivery to, or for use by the ultimate consumer, an invoice or other document may be used in lieu of a label, and such invoice or other document shall show, in addition to the name and address of the person

issuing the invoice or other document, the fiber content of such product as provided in the Act and regulations as well as any other required information.

■ 8. Amend § 303.33, by revising paragraphs (d) and (f) to read as follows:

§ 303.33 Country where textile fiber products are processed or manufactured.

* * * * *

(d) The country of origin of an imported textile fiber product as determined under the laws and regulations enforced by United States Customs and Border Protection shall be considered to be the country where such textile fiber product was processed or manufactured.

* * * * *

(f) Nothing in this rule shall be construed as limiting in any way the information required to be disclosed on labels under the provisions of any Tariff Act of the United States or regulations promulgated thereunder.

■ 9. Revise § 303.35 to read as follows:

§ 303.35 Use of terms ''virgin'' or ''new.''

The terms *virgin* or *new* as descriptive of a textile fiber product, or any fiber or part thereof, shall not be used when the product, fiber or part so described is not composed wholly of new or virgin fiber which has never been reclaimed from any spun, woven, knitted, felted, bonded, or similarly manufactured product.

10. Amend § 303.36 by revising the introductory text of paragraph (a) and paragraphs (a)(2) and (b), to read as follows:

§ 303.36 Form of separate guaranty.

(a) The following are suggested forms of separate guaranties under section 10 of the Act which may be used by a guarantor residing in the United States on or as part of an invoice or other document relating to the marketing or handling of any textile fiber products listed and designated therein, and showing the date of such invoice or other document and the signature and address of the guarantor.

* * * * *

(2) *Guaranty based on guaranty.* Based upon a guaranty received, we guaranty that the textile fiber products specified herein are not misbranded nor falsely nor deceptively advertised or invoiced under the provisions of the Textile Fiber Products Identification Act and rules and regulations thereunder.

Note: The printed name and address on the invoice or other document will suffice to meet the signature and address requirements.

(b) The mere disclosure of required information including the fiber content of a textile fiber product on a label or on an invoice or other document relating to its marketing or handling shall not be considered a form of separate guaranty.

■ 11. Revise § 303.37 to read as follows:

§ 303.37 Form of continuing guaranty from seller to buyer.

Under section 10 of the Act, a seller residing in the United States may give a buyer a continuing guaranty to be applicable to all textile fiber products sold or to be sold. The following is the prescribed form of continuing guaranty from seller to buyer.

We, the undersigned, guaranty that all textile fiber products now being sold or which may hereafter be sold or delivered to ___ are not, and will not be misbranded or falsely or deceptively advertised or invoiced under the provisions of the Textile Fiber Products Identification Act and rules and regulations thereunder. We acknowledge that furnishing a false guaranty is an unlawful, unfair and deceptive act or practice pursuant to the Federal Trade Commission Act, and certify that we will actively monitor and ensure compliance with the Textile Fiber Products Identification Act and rules and regulations thereunder during the duration of this guaranty. This guaranty is effective for one year from the date of this certification.

Dated, signed, and certified this __ day of __, 20 _, at ___ (City), _ (State or Territory) ___ (name under which business is conducted.)

I certify that the information supplied in this form is true and correct.

_____

Signature of Proprietor, Principal Partner, or Corporate Official

_____

Name (Print or Type) and Title

■ 12. Amend § 303.38 by revising paragraphs (a)(2), (b) and (c) to read as follows:

§ 303.38 Continuing guaranty filed with Federal Trade Commission.

(a) * * *

(2) Continuing guaranties filed with the Commission shall continue in effect for one year unless revoked earlier. The guarantor shall promptly report any change in business status to the Commission.

* * * * *

(b) Prescribed form for a continuing guaranty:

BILLING CODE 6750–01–P

CONTINUING GUARANTY FOR FIBER & FUR PRODUCTS

BUSINESS INFORMATION

1. Legal Name of Guarantor Firm

2. Name under which Guarantor Firm does business, if different from legal name

3. Type of Company: ☐ Proprietorship ☐ Partnership ☐ Corporation

4. Address of Principal Office or Place of Business *(Include Zip Code)*

OPTIONAL INFORMATION:

Web Address:

Telephone Number: Fax Number:

UNDER WHICH LAW IS THE CONTINUING GUARANTY TO BE FILED?

5. Put an 'X' in the appropriate boxes.

☐ Under the **Textile Fiber Products Identification Act** (15 U.S.C. §§ 70-70k): The company named above, which manufacturers, markets, or handles textile fiber products: (1) guarantees that any textile fiber product it sells, ships, or delivers will not be misbranded or falsely or deceptively advertised or invoiced; (2) acknowledges that furnishing a false guaranty is an unlawful unfair and deceptive act or practice pursuant to the Federal Trade Commission Act; and (3) certifies that it will actively monitor and ensure compliance with the Textile Fiber Products Identification Act and the Rules and Regulations issued under the Act during the duration of the guaranty.

☐ Under the **Wool Products Labeling Act** (15 U.S.C. §§ 68-68j): The company named above, which manufacturers, markets, or handles wool products: (1) guarantees that any wool product it sells, ships, or delivers will not be misbranded; (2) acknowledges that furnishing a false guaranty is an unlawful unfair and deceptive act or practice pursuant to the Federal Trade Commission Act; and (3) certifies that it will actively monitor and ensure compliance with the Wool Products Labeling Act and the Rules and Regulations issued under the Act during the duration of the guaranty.

☐ Under the **Fur Products Labeling Act** (15 U.S.C. §§ 69-69k): The company named above, which manufacturers, markets, or handles fur products: (1) guarantees that any fur product it sells, ships, or delivers will not be misbranded or falsely or deceptively advertised or invoiced; (2) acknowledges that furnishing a false guaranty is an unlawful unfair and deceptive act or practice pursuant to the Federal Trade Commission Act; and (3) certifies that it will actively monitor and ensure compliance with the Fur Products Labeling Act and the Rules and Regulations issued under the Act during the duration of the guaranty.

CERTIFICATION

I hereby certify that the information provided on this form is true and correct.

6. Signature of proprietor, principal partner, or corporate official

7. Name *(Please print or type)*

8. Title

9. City and State where signed

10. Date

INSTRUCTIONS

The Textile Fiber Products Identification Act, the Wool Products Labeling Act, and the Fur Products Labeling Act provide that any marketer or manufacturer of fiber or fur products covered by those Acts may file a continuing guaranty with the Federal Trade Commission. The person signing and certifying the guaranty must reside in the United States. Use this form to file such guaranties with the Federal Trade Commission.

In completing this form, please observe the following:

(a) All appropriate blanks on the form should be filled in. Include your Zip Code in item 4.

(b) In item 6, signature of proprietor, partner, or corporate official of guarantor firm.

(c) Send two completed, signed original copies to:

Federal Trade Commission
Division of Enforcement
600 Pennsylvania Ave., NW
Washington, DC 20580

(d) Do not fax application – mail signed originals only.

Length of Guaranty: Continuing guaranties are effective for one year from certification date.

Changes: The guarantor must immediately notify the Commission in writing of any change in business status. Any change in the address of the guarantor's principal office and place of business must also be promptly reported.

DO NOT USE THIS SPACE

Filed _____ 20___

FEDERAL TRADE COMMISSION

FTC Form 31-A (rev. 2/99)

BILLING CODE 6750–01–C

(c) Any person who has a continuing guaranty on file with the Commission may, during the effective dates of the guaranty, give notice of such fact by setting forth on the invoice or other document covering the marketing or handling of the product guaranteed the following:

Continuing guaranty under the Textile Fiber Products Identification Act filed with the Federal Trade Commission.

* * * * *

■ 13. Amend § 303.41 by revising paragraph (a) as follows:

§ 303.41 Use of fiber trademarks and generic names in advertising.

(a) In advertising textile fiber products, the use of a fiber trademark or a generic fiber name shall require a full disclosure of the fiber content information required by the Act and regulations in at least one instance in the advertisement.

* * * * *

■ 14. Amend § 303.42, by revising paragraph (a) to read as follows:

§ 303.42 Arrangement of information in advertising textile fiber products.

(a) Where a textile fiber product is advertised in such manner as to require

disclosure of the information required by the Act and regulations, all parts of the required information shall be stated in immediate conjunction with each other in legible and conspicuous type or lettering of equal size and prominence. In making the required disclosure of the fiber content of the product, the generic names of fibers present in an amount 5 percent or more of the total fiber weight of the product, together with any fibers disclosed in accordance with § 303.3(a), shall appear in order of predominance by weight, to be followed by the designation ''other fiber'' or ''other fibers'' if a fiber or fibers required to be so designated are present. The advertisement need not state the percentage of each fiber.

* * * * *

■ 15. Revise § 303.44 to read as follows:

§ 303.44 Products not intended for uses subject to the Act.

Textile fiber products intended for uses not within the scope of the Act and regulations or intended for uses in other textile fiber products which are exempted or excluded from the Act shall not be subject to the labeling and invoicing requirements of the Act and regulations: *Provided,* An invoice or other document covering the marketing or handling of such products is given, which indicates that the products are not intended for uses subject to the Textile Fiber Products Identification Act.

■ 16. Revise § 303.45 to read as follows:

§ 303.45 Coverage and exclusions from the act.

(a) The following textile fiber products are subject to the Act and regulations, unless excluded from the Act's requirements in paragraph (b) of this section:

(1) Articles of wearing apparel;
(2) Handkerchiefs;
(3) Scarfs;
(4) Beddings;
(5) Curtains and casements;
(6) Draperies;
(7) Tablecloths, napkins, and doilies;
(8) Floor coverings;
(9) Towels;
(10) Wash cloths and dish cloths;
(11) Ironing board covers and pads;
(12) Umbrellas and parasols;
(13) Batts;
(14) Products subject to section 4(h) of the Act;
(15) Flags with heading or more than 216 square inches (13.9 dm^2) in size;
(16) Cushions;
(17) All fibers, yarns and fabrics (including narrow fabrics except packaging ribbons);
(18) Furniture slip covers and other covers or coverlets for furniture;
(19) Afghans and throws;
(20) Sleeping bags;
(21) Antimacassars and tidies;
(22) Hammocks; and
(23) Dresser and other furniture scarfs.

(b) Pursuant to section 12(b) of the Act, all textile fiber products other than those identified in paragraph (a) of this section, and the following textile fiber products, are excluded from the Act's requirements:

(1) Belts, suspenders, arm bands, permanently knotted neckties, garters, sanitary belts, diaper liners, labels (either required or non-required) individually and in rolls, looper clips intended for handicraft purposes, book cloth, artists' canvases, tapestry cloth, and shoe laces.

(2) All textile fiber products manufactured by the operators of company stores and offered for sale and sold exclusively to their own employees as ultimate consumers.

(3) Coated fabrics and those portions of textile fiber products made of coated fabrics.

(4) Secondhand household textile articles which are discernibly secondhand or which are marked to indicate their secondhand character.

(5) Non-woven products of a disposable nature intended for one-time use only.

(6) All curtains, casements, draperies, and table place mats, or any portions thereof otherwise subject to the Act, made principally of slats, rods, or strips, composed of wood, metal, plastic, or leather.

(7) All textile fiber products in a form ready for the ultimate consumer procured by the military services of the United States which are bought according to specifications, but shall not include those textile fiber products sold and distributed through post exchanges, sales commissaries, or ship stores; provided, however, that if the military services sell textile fiber products for nongovernmental purposes the information with respect to the fiber content of such products shall be furnished to the purchaser thereof who shall label such products in conformity with the Act and regulations before such products are distributed for civilian use.

(8) All hand woven rugs made by Navajo Indians which have attached thereto the ''Certificate of Genuineness'' supplied by the Indian Arts and Crafts Board of the United States Department of Interior. The term Navajo Indian means any Indian who is listed on the register of the Navajo Indian Tribe or is eligible for listing thereon.

(c) The exclusions provided for in paragraph (b) of this section shall not be applicable:

(1) if any representations as to the fiber content of such products are made on any label or in any advertisement without making a full and complete fiber content disclosure on such label or in such advertisement in accordance with the Act and regulations with the exception of those products excluded by paragraph (b)(5) of this section; or

(2) If any false, deceptive, or misleading representations are made as to the fiber content of such products.

(d) The exclusions from the Act provided in paragraph (b) of this section are in addition to the exemptions from the Act provided in section 12(a) of the Act and shall not affect or limit such exemptions.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2013–10584 Filed 5–17–13; 8:45 am]

BILLING CODE 6750–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112 and 1227

[Docket No. CPSC–2013–0019]

Safety Standard for Carriages and Strollers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Danny Keysar Child Product Safety Notification Act, Section 104 of the Consumer Product Safety Improvement Act of 2008 (CPSIA), requires the United States Consumer Product Safety Commission (Commission or CPSC) to promulgate consumer product safety standards for durable infant or toddler products. These standards are to be ''substantially the same as'' applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The Commission is proposing a safety standard for carriages and strollers in response to the direction under Section 104(b) of the CPSIA.

DATES: Submit comments by August 5, 2013.

ADDRESSES: Comments related to the Paperwork Reduction Act aspects of the marking, labeling, and instructional literature of the proposed rule should be directed to the Office of Information and Regulatory Affairs, OMB, Attn: CPSC Desk Officer, FAX: 202–395–6974, or

emailed to *oira_submission@omb.eop.gov*.

Other comments, identified by Docket No. CPSC–2013–0019, may be submitted electronically or in writing:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov*. Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov*. The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions in the following way: Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this proposed rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov*. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov*, and insert the docket number, CPSC–2013–0019, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Rana Balci-Sinha, Project Manager, Division of Human Factors, Directorate for Engineering Sciences, Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20850; telephone: 301–987–2584; email: *rbalcisinha@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background and Statutory Authority

The Consumer Product Safety Improvement Act of 2008 (CPSIA, Pub. L. 110–314) was enacted on August 14, 2008. Section 104(b) of the CPSIA, part of the Danny Keysar Child Product Safety Notification Act, requires the Commission to: (1) Examine and assess the effectiveness of voluntary consumer product safety standards for durable infant or toddler products, in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts; and (2) promulgate consumer product safety standards for durable infant and toddler products. These standards are to be ''substantially the same as'' applicable voluntary standards or more stringent than the voluntary standard if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product. The term ''durable infant or toddler product'' is defined in section 104(f)(1) of the CPSIA as ''a durable product intended for use, or that may be reasonably expected to be used, by children under the age of 5 years.''

In this document, the Commission is proposing a safety standard for carriages and strollers. ''Strollers'' are specifically identified in section 104(f)(2)(I) of the CPSIA as a durable infant or toddler product. Pursuant to Section 104(b)(1)(A), the Commission consulted with manufacturers, retailers, trade organizations, laboratories, consumer advocacy groups, consultants, and members of the public in the development of this proposed standard, largely through the ASTM process. The proposed rule is based on the voluntary standard developed by ASTM International (formerly the American Society for Testing and Materials), ASTM F833–13, ''Standard Consumer Safety Specification for Carriages and Strollers'' (ASTM F833–13), with a proposed additional requirement and test method to address scissoring, pinching, or shearing hazards at the hinge link of 2D fold strollers. ASTM F833–13 includes carriages as well as strollers, as well as convertible carriages/strollers. Accordingly, the proposed rule would cover all of these product types. The ASTM standard is copyrighted, but it can be viewed as a read-only document during the comment period on this proposal only, at: *http://www.astm.org/cpsc.htm*, by permission of ASTM.

II. Product Description

A. Definition of Carriage and Stroller

ASTM F833–13 ''Standard Consumer Safety Performance Specification for Carriages and Strollers'' defines a ''stroller'' as a wheeled vehicle to transport children usually from infancy to 36 months of age. Children are transported generally in a sitting-up or semi-reclined position. The motive power is supplied by a person moving at a walking rate while pushing on a handle attached to the stroller. Carriages, on the other hand, are wheeled vehicles to transport an infant usually in a lying down position. Thus, the principal difference between strollers and carriages is the position of the occupant. Both carriages and strollers may be capable of being folded for storage. Umbrella strollers are lightweight, compact when folded, and may lack certain accessories such as baskets underneath the seat or cup holders for the caregiver. Strollers that fold in two dimensions, the height and length are called ''2D'' strollers. Strollers that collapse in all three dimensions—height, length, and width—resulting in a smaller folded package than 2D strollers are called ''3D'' strollers. Other types of strollers include travel systems that accommodate an infant car seat on a stroller. If a stroller is intended to be used at a jogging rate, then it is called a jogging stroller. Some products can be used as both strollers and carriages (convertible carriages/strollers). Convertible carriages or strollers are intended to be converted by the owner to be used as a carriage or a stroller. Some strollers incorporate automatic or assisted folding and unfolding mechanisms.

B. Market Description

The majority of carriages/strollers are produced and/or marketed by juvenile product manufacturers and distributors. CPSC staff believes that there are currently at least 86 suppliers of carriages/strollers to the U.S. market. Thirty-four are domestic manufacturers, 33 are domestic importers, and the supply sources of seven domestic firms are unknown. In addition, 12 foreign firms supply strollers to the U.S. market—six foreign manufacturers, two firms that import products from foreign companies and distribute them from outside of the United States, two foreign retailers that ship directly to the United States, and two firms with unknown supply sources.

According to a 2005 survey conducted by the American Baby Group (*2006 Baby Products Tracking Study*), nearly all new mothers (99 percent) own at least one stroller. Based on data from the survey, nearly 4.1 million strollers are owned by new mothers, and there would be an estimated 9.1–11.2 million households with strollers available for use annually (4.1 million $\times$ .99 $\times$ 2.25 to 4.1 million $\times$ .99 $\times$ 2.75). Approximately 26 percent of strollers were handed down or purchased secondhand. Thus, about 74 percent of strollers were acquired new, and approximately 3 million strollers are sold to households annually (.99 $\times$ .74 $\times$ 4.1 million births

per year). Strollers can cost anywhere between $20 to $1,200, depending upon the type and brand. On average, umbrella strollers tend to be the least expensive (around $25–$50 for the least costly versions); and most other strollers cost around $150–$300, with many carriages, travel systems, and jogging strollers costs running in the $500–$700 range. Strollers generally are used during a child's first two years, with some caregivers continuing to use strollers into the third year. Although CPSC staff does not know the proportion of consumers who continue to use strollers into the third year, CPSC staff believes that approximately 25–75 percent may do so.

III. Incident Data

The incident data was reviewed for carriages, strollers, and convertible carriages/strollers. There have been only a few incidents with no reported injuries associated with carriages, and CPSC staff has not identified any carriage-specific hazards. Accordingly, the incident data focuses on strollers. CPSC's Directorate for Epidemiology, Division of Hazard Analysis, is aware of a total of 1,207 incidents related to strollers reported from January 1, 2008 through December 31, 2012. The age range for the data extracted includes children 4 years old or younger (or unreported/unknown). Four incidents involved a fatality, and 1,203 incidents were nonfatal.

A. Fatalities

Four stroller-related fatalities were reported to CPSC from January 1, 2008 through December 31, 2012. Two of the incidents were related to insufficient clearance space between stroller components: in the first fatal incident, a 5-month old infant's head became entrapped between the seat and tray; in the second incident, a 5-month-old infant's head was wedged between the car seat of a travel system and a metal bar located under the cup holder. In the third fatal incident, the stroller collapsed onto a 4-year-old child, resulting in compressional asphyxiation. The fourth fatal incident occurred when the stroller fell off of a dock and into a bay, which resulted in the child drowning. However, that incident lacked sufficient details to determine if the fatality was product related.

B. Nonfatalities

A total of 1,203 stroller-related nonfatal incidents were reported from January 1, 2008 through December 31, 2012. Of the nonfatal incidents, 359 resulted in an injury. Seventy-two of the nonfatal injuries were related to hinges; wheel-related issues resulted in 52 reported injuries; while locking mechanism failures were associated with 42 reported injuries. A total of 70 incidents resulted in moderate and severe injuries, such as lacerations requiring stitches, tooth extractions, fractures, head injuries, and partial amputations of fingers.

C. Hazard Pattern Identification

CPSC staff considered all of the fatal and nonfatal reported incidents to identify hazard patterns associated with strollers. The hazard patterns were grouped into the following categories:

Wheel issues were the most commonly reported hazard, with a total of 429 incidents (36 percent of the 1,207 incidents). The major hazard patterns included broken wheel rim, wheel detachment, and a burst tire. A total of 52 reported injuries occurred, including two hospitalizations due to falls that resulted in a bone fracture and head concussion.

Parking brake problems related to parking brake failure or assembly resulted in 132 incidents, including eight injuries. Incidents typically occurred when the parking brakes were assumed to be functional after setting them, but the stroller rolled away and struck an object.

Lock mechanism issues resulting in unexpected collapse of the stroller accounted for 121 incidents. One fatality was reported where the partially erected, unlatched stroller collapsed onto the child when he climbed into the seat, resulting in compressional asphyxiation. A total of 42 injuries were reported in this category, including two hospitalizations, one due to a fall that resulted in a skull fracture and the second due to the collapse of the stroller, resulting in an amputated finger.

Restraint issues, such as a child unbuckling the restraint, restraint breakage or detachment, and restraints that are too loose were reported in 83 incidents, resulting in 29 injuries.

Hinge issues were reported in 75 incidents, resulting in 72 injuries. This is the highest injury rate of any stroller hazard category. Most of the hinge-related injuries occurred when a caregiver was unfolding the stroller for use and the child was climbing into the stroller. Reported injuries involved pinched, lacerated, or amputated fingers or arms, including one hospitalization for reattachment of a finger.

Structural integrity-related issues, such as failure or malfunction of various structural components (*e.g.,* frame, attachment points for the seat, footrest, and sunshades) resulted in 63 incidents. A total of 16 injuries were reported in this category, including one hospitalization due to a fall, which resulted in bleeding gums.

Stability/tip-over issues resulted in 58 incidents, including 24 reported injuries resulting mostly from falls.

Clearance issues between certain components of a stroller, such as seat and handlebar, basket, canopy, tray, or frame, between the footrest and wheel or between the car seat and handlebar resulted in 38 incidents including 19 injuries. Two fatalities were reported in this category. In the first incident, a 5-month-old victim's head was trapped between the edge of the car seat and a metal bar located right under the cup holder. In the second incident, a 5-month-old child had his head trapped in the opening between the stroller seat and tray.

Car seat attachment-related issues, including the car seat detaching, not locking, or tipping over, resulted in 35 incidents. Most of the incidents resulted in no injury, and five resulted in minor injuries, such as bumps.

Canopy-related issues were involved in 24 incidents and resulted in 18 injuries. Sixteen injuries were due to canopy folds, where the child's finger was caught. One injury required hospitalization where a child's finger was reattached. Other hazards included cords that are attached to canopies, resulting in strangulation hazards and attachments with sharp edges or small parts.

Handlebar issues were involved in 21 incidents, resulting in seven injuries. One injury required hospitalization after a child's finger was caught in a reversible handle hinge and was amputated. Eleven incidents were the result of broken handlebars.

Seat-related issues, such as seat fabric tear resulted in 19 incidents including 4 injuries.

Sharp points or edges resulted in 18 incidents with 16 injuries.

Tray-related issues, such as breakage, detachment, or malfunction resulted in 14 incidents, including 11 injuries, eight involving fingers.

Unspecified category includes stroller-related incidents lacking sufficient information to determine the cause. There were 32 reported incidents in this category, including 21 injuries and one fatality. The fatal incident involved a stroller falling off of a dock and into a bay that resulted in a victim drowning. There were two hospitalizations: The first incident involved a child falling into a lake while strapped in his stroller, and the second

incident involved a child falling off of his stroller at his home.

Miscellaneous problems, including strap detachment, logo detachment, rust, lead, tearing material, and jump seat detachment were involved in 40 incidents, including 15 with reported injuries. In 15 incidents, a child was choking on a toy accessory or tag that had been removed from the product. Five of the injuries resulted in unexpected detachment of jump seats while in use.

In some cases, older children (5 years of age or older) and adults also got injured on the stroller. Strollers are not self-propelled and remain stationary until pushed by a person other than the occupant. Caregivers are also involved in setting up the stroller (*e.g.,* folding, unfolding, removing the stroller from the trunk, and pumping air into the stroller tire). Caregiver involvement requires a different set of interactions with the stroller and poses various risks. There were 78 reported stroller incidents that involved children older than 4 and adults: 20 of these injuries were moderate and severe. Out of 78 incidents, 72 involved victims between 17 and 64 years of age. Seventy-four incidents resulted in injuries, mostly to the fingers.

In addition, there were five consumer complaint reports with no incidents or injuries.

D. NEISS Data

In addition to the 1,207 incident reports received by the Commission, we estimated the number of injuries treated in U.S. hospital emergency departments using the CPSC's National Electronic Injury Surveillance System (NEISS). Over a 4-year-period, a total of 46,200 stroller-related injuries were treated in U.S. hospital emergency departments from January 2008 through December 2011. Because CPSC's NEISS data for 2012 is not yet finalized, only partial estimates for 2012 are available. There was no statistically significant increase or decrease observed in the estimated injuries from one year to the next, nor was there any statistically significant trend observed over the 4-year period from 2008 to 2011.

No fatalities were reported through NEISS. Most of the injuries (94%) were treated and released. Most of the incidents were related to falls on or off the stroller. A breakdown of the characteristics among the emergency department-treated injuries associated with strollers is presented in the bullets below:

- Injured body part—head (51%), face (24%), mouth (9%), finger (5%); and
- Injury type—internal organ injury (36%), contusions/abrasions (24%), laceration (18%).

E. Product Recalls

Between January 1, 2008 and December 31, 2012, there were 29 recalls involving 6.82 million strollers and 15 different firms. The recalls related to incidents involving finger injuries, strangulation hazards, brake failures, choking hazards, and fall hazards. Additional information on these recalls can be found in staff's briefing package on the Commission's Web site at: *www.cpsc.gov* or *www.saferproducts.gov*.

IV. Other Standards

A. International Standards

CPSC staff reviewed the performance requirements of the current ASTM standard, ASTM F833–13, to the performance requirements of other standards, including those from Canada, the European Union (EU), and Australia/New Zealand. Strollers and carriages are regulated products in Canada that must meet the requirements published by Health Canada in April 1985, SOR/85–379, *Carriages and Strollers Regulations.* Although Canada's regulation has no requirements that address head entrapment or buckle release, the Canadian restraint system strength requirements are more severe than those in ASTM F833–13. The stroller standard in Europe, published in March 2012, is EN 1888:2012, *Child care articles—Wheeled child conveyances—Safety requirements and test methods,* also does not contain requirements that address head entrapment or buckle release. However, the EN 1888 standard requires fatigue tests in several places to evaluate the durability of attachment points and locks/latches. The standard that covers stroller safety in Australia and New Zealand, published on December 14, 2009, AS/NZS 2088:2009 *Prams and strollers—Safety requirements,* is a very thorough and stringent stroller standard. However, the standard lacks a head entrapment test and a dynamic scissoring, shearing, and pinching test. This standard also requires fatigue tests to evaluate the durability of attachment points and locks/latches, similar to those found in EN 1888.

CPSC staff evaluated the requirements of the international standards and determined that the current ASTM F833–13 standard is the most comprehensive of the standards to address the incident hazards associated with strollers. Although some individual requirements in international standards are more stringent than ASTM F833–13, based on the current hazard patterns identified in the incident reports, CPSC is not proposing to adopt additional requirements at this time, with the exception of the proposed performance requirement and test procedure to address scissoring, shearing, and pinching hazards associated with 2D fold strollers. However, CPSC staff will continue to monitor hazard patterns and recommend future changes, if necessary.

B. Voluntary Standard—ASTM F833

1. History of ASTM F833

ASTM F833, ''Standard Consumer Safety Performance Specification for Carriages and Strollers,'' establishes safety performance requirements, test methods, and labeling requirements to minimize the hazards to children presented by carriages and strollers. ASTM first published a consumer product safety standard for strollers in 1983. It has been revised 20 times in the past 29 years, with six revisions in the past 5 years. By the end of 2008, the majority of the general requirements were in place, including the following:

- Latching mechanisms must resist unintentional folding when a 45 lb. force is applied five times in an attempt to fold the product without releasing a latch;
- Toy accessories must meet the requirements of ASTM F963, *Standard Consumer Safety Specification for Toy Safety;* and
- Several general requirements common to ASTM standards, including: hazardous points and edges; small parts; paint and surface coatings; wood being smooth and free of splinters; holes and slots that could trap a child's finger; exposed coil springs; warning label permanency; and retention of protective components.

In addition, eight performance requirements were included in ASTM F833–08:

- *Parking Brake*—A parking brake must be provided and the braked wheels shall not rotate more than 90° when tested on a 12° incline.
- *Static Load*—A stroller shall support a weight of 100 lbs. or 2.5 times the manufacturer-recommended maximum weight in each individual seating area. A combination unit of a car seat on a stroller must support a 50-lb. weight.
- *Stability*—The product with a 17-lbm. CAMI dummy shall not tip over when placed on a 12° incline and shall not tip forward when a 40 lb. force is applied downward where a child would likely step to climb into the stroller.

• *Restraining System*—A three-point restraint system (waist and crotch) must be present and may not detach, nor may the adjusting elements permit slippage more than 1 in. when tested as follows:

a. Apply 45-lb. force to each anchoring point.

b. Insert CAMI infant dummy, secure restraints, and pull a leg with 45-lbs. of force five times.

• *Occupant Retention*—A wall surrounding all sides above the floor of the occupant space shall not permit the passage of a 3-in. diameter probe.

• *Combination Unit of a Car Seat on a Stroller*—This section lists the specific requirements combination frame/car seat products must meet to eliminate omissions due to differing interpretations of the standard.

• *Impact Test*—The product shall not become damaged, and the car seat may not become completely separated from the frame, with 40 lb. (or maximum recommended weight) secured by the restraint system in each seating area, then allowed to roll 40 in. down a 20° slope into a rigid steel stop.

• *Passive Containment/Foot Opening*—Products with a tray or grab bar in front of the occupant that creates an opening that could potentially trap a child's head are not permitted. If the opening permits the passage of a 3.0 in. x 5.5 in. torso probe, it must also permit the passage of an 8.0-in. diameter head probe sphere.

Minor changes to the standard were made from 2008 through 2011. In addition to editorial alterations and clarifications, the 2009 revision (F833–09) excluded self-propelled products, including tricycles with push handles. The next revision, published in May 2010 (F833–10), added rotating seats to the stability test, and more importantly, made the impact test more stringent. In addition, the detachment of *any* car seat attachment point from a stroller frame would constitute a failure of the impact test. The 2011 version of the standard added a requirement specifying the text size for instructional literature warnings.

2. Description of the Current Voluntary Standard—ASTM F833–13

Since 2011, CPSC staff has worked with ASTM stakeholders in task groups to develop new requirements and improve certain requirements to address the hazards identified in the incident data. With the exception of a proposed performance requirement and test procedure to address scissoring, shearing, and pinching hazards associated with 2D fold strollers, CPSC finds that ASTM F833–13 will address the hazards identified in the incident data. This section discusses how each hazard pattern described is addressed in the current voluntary standard ASTM F833–13.

Wheel Issues—A new performance requirement addresses the wheel detachment hazard pattern. This requirement verifies the strength with which wheels are attached to the stroller. A wheel detachment test is applied to non-swivel wheels and swivel wheels, as well as to the wheels that are intended to be detached from a removable wheel fork assembly. A new warning label is also required on the front wheel fork, alerting the user to a possible tip-over hazard if the wheel is not attached securely. In addition, new warning labels are required for three-wheeled strollers, if the front wheel is intended to be locked during running, jogging, or walking fast.

Parking Brakes—ASTM F833–13 includes a modified performance requirement and associated test to address weak parking brakes. The improved requirement increases both the applied force (by approximately 50%) and the number of repetitions, resulting in a more stringent parking brake system performance requirement.

Lock Mechanism—A more stringent performance requirement requires the successful completion of a test that applies a force to the handle bars in a direction likely to break and disengage the folding latch system. This updated requirement will significantly reduce the hazard associated with weak lock/latch mechanisms.

Restraint—The requirements included in the ASTM standard prior to the 2013 version addressed restraint system breakage, detachment, and poor fit failure modes. ASTM F833–13 adds a new requirement to reduce the ability of a child to escape by unbuckling the harness straps. The new requirement states that the buckle shall either have a single-action release mechanism that does not release at a force less than 9 lbf., or a buckle that consists of a double-action release mechanism.

Hinges—The highest injury rate of any stroller hazard category arises from scissoring, pinching, or shearing at the hinge link of 2D and 3D strollers. Even though certain pinching and shearing hazards are addressed in the previous versions of the standard, this requirement applied only after the stroller was erected and secured. Incident data showed that the majority of the injuries occurred when the stroller was partially erected; therefore, a new requirement addressing the hazard during the unfolding action was necessary. ASTM F833–13 now includes a requirement to address the hinge link hazards on 3D fold strollers, but it still fails to address 2D fold strollers. The proposed rule would add a performance requirement and test method similar to the provisions for 3D fold strollers to address hinge link hazards on 2D fold strollers.

Structural Integrity—ASTM F833–13 contains performance requirements that contribute to the general evaluation of structural integrity, including latching mechanisms, parking brake requirements, static load, stability, restraining system, and impact test.

Stability/Tip Over—Performance requirements associated with stability have been strengthened in ASTM F833–13 to account for strollers that have rearward or swiveling seats that can face multiple directions. In addition, testing requirements for stability have been modified so that the test is executed to a more stringent stability performance requirement.

Clearance—In addition to the preexisting requirement associated with evaluating the gap between the seat and front tray to prevent head entrapment, ASTM F833–13 requires a new entrapment test with a car seat on a stroller or convertible carriage/stroller. This additional requirement addresses the fatality scenario in which a child was found suspended between the foot end of a car seat and a metal bar under the cup holder tray.

Car Seat Attachment—ASTM F833–13 requires combination units to meet general requirements associated with latching, parking brakes, static load, and stability and tip over.

Canopy—ASTM F833–13 includes a new performance requirement to address the scissoring, shearing, and pinching hazard caused by canopy pivots. In addition, the standard incorporates a new performance requirement to address the strangulation hazard associated with cords and straps within the ''occupant space,'' by eliminating cords or straps that can create a hazardous loop.

Handlebar—ASTM F833–13 addresses the structural integrity of handlebar hinges and latches, the strength of metal frame, and handle grip structural integrity with an improved latch performance requirement.

Seat—The separated seam failure mode is addressed by ASTM F833–13 with the static load performance requirement. This requirement states that the seat shall support 100 lbs. or 2.5 times the manufacturer's recommended maximum weight, whichever is greater.

Sharp Points or Edges—Sharp points and edges are addressed in ASTM F833–13.

Tray—Most of the incidents associated with trays involve pinch hazards with the closing motion or gaps that entrap small fingers. Although ASTM F833–13 does not specifically address scissoring, shearing, and pinching hazards due to tray articulation, latching, and locking, it does include a general requirement for openings.

Miscellaneous—Choking hazards are addressed by ASTM F833–13 in the small parts prohibition section, labeling section, as well as the toy accessories requirement.

Older Children and Adults—The requirements added to or improved in ASTM F833–13, and the proposed new requirement and test method to address scissoring, shearing, and pinching hazards associated with 2D fold strollers, may address nearly half of the adult injury hazard patterns that were identified by CPSC staff.

IV. Proposed Change to ASTM F833–13

Hinge issues were reported in 75 incidents, resulting in 72 injuries. This is the highest injury rate of any stroller hazard category. Most of the hinge-related injuries resulted from scissoring, pinching, or shearing at the hinge link of 2D and 3D strollers. Most of the incidents occurred when a caregiver was unfolding the stroller for use and the child was climbing into the stroller. Reported injuries involved pinched, lacerated, or amputated fingers or arms, including one hospitalization for reattachment of a finger. Incident data show that the majority of the injuries occurred when the stroller was partially erected; therefore, a new requirement addressing the hazard during the unfolding action had to be developed. Although ASTM F833–13 now includes a requirement addressing this hazard in the 3D fold strollers, it does not address 2D fold strollers. For 3D fold strollers, ASTM F833–13 requires that 3D saddle hinges must be constructed to prevent injury from scissoring, shearing, or pinching. The 3D fold test is dynamic. The stroller is partially unfolded so that the main side rail tubes are positioned 90° to one another. Saddle hinge scissoring, shearing, and pinching conditions are checked for with the two probes (0.210-in. and 0.375-in. diameter) while opening the stroller into the manufacturer's recommended open and locked position.

The proposed rule would add a performance requirement and test method similar to the provisions for 3D fold strollers to address scissoring, shearing, and pinching hazards associated with 2D fold strollers. The proposed new requirement would provide that the frame folding action of a stroller shall not create a scissoring, shearing, or pinching hazard when tested. The proposed new test is dynamic, like the saddle hinge test, and the test also determines if the hazard exists with the same two probes while the stroller is moved from a partially to the fully erect and locked position. Scissoring, shearing, or pinching that may cause injury exists when the edges of the rigid parts admit a 0.210-in diameter probe but do not admit a 0.375-in diameter probe when tested. Based on the incident data and anthropometric dimensions of the child occupant, the proposal defines an ''access zone'' that is easily accessible by a child. All hinges that are within the access zone must be checked for a scissoring, shearing, or pinching hazard while the stroller is moved from a partially to a fully erect and locked position. Adding this new performance requirement and test procedure would significantly reduce the risk of injury associated with the frame folding action.

V. Effective Date

The Administrative Procedure Act (APA) generally requires that the effective date of the rule be at least 30 days after publication of the final rule. 5 U.S.C. 553(d). On April 7, 2012, CPSC staff received a letter from the Juvenile Products Manufacturers Association (JPMA), asking for an effective date of 24 months following publication of the carriage and stroller final rule. In that letter, JPMA stated that many challenges remain before implementing the new requirements, including design changes and revised product development schedules. The ASTM balloting process in February 2013 generated more recent comments regarding the effective date. Several manufacturers commented again on the need for additional time for compliance to address significant design and development redesign implementation. However, these commenters now request 18 months. The Commission is aware that significant revisions were made to the latest version of the standard requiring many modifications to carriages and strollers. Due to the complexity of stroller designs, and to allow time for manufacturers of carriage/stroller products to come into compliance, the Commission proposes that the standard become effective 18 months after publication of a final rule in the **Federal Register**. The Commission invites comment on whether 18 months is an appropriate length of time for carriage/stroller manufacturers to come into compliance with the rule.

VI. Regulatory Flexibility Act

1. Introduction

The Regulatory Flexibility Act (RFA) requires that proposed rules be reviewed for their potential economic impact on small entities, including small businesses. Section 603 of the RFA generally requires that agencies prepare an initial regulatory flexibility analysis and make it available to the public for comment when a general notice of proposed rulemaking is published. The initial regulatory flexibility analysis must describe the impact of the proposed rule on small entities and identify any alternatives that may reduce the impact. Specifically, the initial regulatory flexibility analysis must contain:

- A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and legal basis for, the proposed rule;
- A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities subject to the requirements and the types of professional skills necessary for the preparation of reports or records; and
- Identification, to the extent possible, of all relevant federal rules which may duplicate, overlap, or conflict with the proposed rule.

2. Reason for Agency Action and Legal Basis for the Proposed Rule

The Danny Keysar Child Product Safety Notification Act, section 104 of the CPSIA, requires the CPSC to promulgate mandatory standards that are substantially the same as, or more stringent than, the voluntary standard for a durable infant or toddler product. CPSC staff worked closely with ASTM stakeholders to develop the new requirements and test procedures that have been incorporated into ASTM F833–13, which forms the basis of the proposed rule.

3. Other Federal Rules

Section 14(a)(2) of the CPSA requires every manufacturer and private labeler of a children's product that is subject to a children's product safety rule to certify, based on third party testing conducted by a CPSC-accepted laboratory, that the product complies with all applicable children's product safety rules. Section 14(d)(2) of the

CPSA requires the Commission to establish protocols and standards, by rule, for among other things, ensuring that a children's product is tested periodically and where there has been a material change in the product, and for safeguarding against the exercise of undue influence on a conformity assessment body by a manufacturer or private labeler. A final rule implementing sections 14(a)(2) and 14(d)(2) of CPSA, *Testing and Labeling Pertaining to Product Certification,* 16 CFR part 1107, became effective on February 13, 2013 (the 1107 rule).

Carriages and strollers will be subject to a mandatory children's product safety rule, so they will also be subject to the third party testing requirements of section 14 of the CPSA and the 1107 rule when the final rule and the notice of requirements become effective.

4. Impact on Small Businesses

Approximately 86 firms currently supply carriages/strollers in the U.S. market. Under U.S. Small Business Administration (SBA) guidelines, a manufacturer is small if it has 500 or fewer employees, and importers and wholesalers are considered small if they have 100 or fewer employees. Based on these guidelines, about 51 suppliers are small firms—26 domestic manufacturers, 22 domestic importers, and three firms with unknown supply sources. There may be additional unknown small carriage/stroller suppliers operating in the U.S. market.

Small Manufacturers. The expected impact of the proposed rule on small manufacturers will differ based on whether their carriages/strollers are already compliant with ASTM F833–11. In general, firms whose carriages/strollers meet the requirements of ASTM F833–11 are likely to continue to comply with the voluntary standard as new versions are published. In addition, they are likely to meet any new standard before a final rule becomes effective. Many of these firms are active in the ASTM standard development process, and compliance with the voluntary standard is part of an established business practice.

Meeting ASTM F833–13's requirements could necessitate product redesign for at least some carriages/strollers not believed to be compliant with ASTM F833–11 (7 of 26 small domestic manufacturers). A redesign would be minor if most of the changes involve adding straps and fasteners or using different mesh or fabric, but could be more significant if changes to the frame are required. Due to the complexity of carriages/strollers, a complete redesign of these products, including engineering time, prototype development, tooling, and other incidental costs, could exceed $1 million for the most complex models. Industry sources, including JPMA, note that new tooling alone could exceed $300,000 per product model. However, costs and development time are likely to vary widely across firms. Companies with substantial experience in manufacturing carriages/strollers should be able to complete redesigns more cost effectively than firms with less experience. Additionally, firms with numerous carriage/stroller models may experience lower costs because models could be redesigned as a group.

The direct impact on manufacturers whose products are expected to meet the requirements of ASTM F833–13 (19 of 26 small domestic manufacturers) could be significant in some cases, due to the proposed 2D frame folding requirement, as well as the relatively low revenues associated with many small manufacturers. While meeting this requirement could be as simple as replacing hinges or adding covers, this may not be a realistic alternative for some firms. According to one manufacturer, it is difficult to make added parts look cohesive with the original product, a quality that consumers might prefer. Therefore, some firms may need to develop new models, rather than try to create cohesive products by retrofitting older models. The majority of small manufacturers have at least one 2D stroller model; so it is possible that at least some will opt to redesign their existing noncompliant strollers.

The direct costs of design/redesign on firms may be mitigated if the costs are treated as new product expenses that can be amortized, and the Commission is proposing an 18-month effective date to help reduce further the impact of the proposed rule. This would give firms additional time to develop new/modified products and spread costs over a longer time frame. It is possible that additional time beyond 18 months may be required, however; and CPSC requests specific comments on alternative effective dates.

In addition, once the rule becomes final and the notice of requirements is in effect, all manufacturers will be subject to the additional costs associated with the third party testing and certification requirements. This will include any physical and mechanical test requirements specified in the final rule; lead and phthalates testing is already required.

CPSC staff estimates that testing to the ASTM voluntary standard could cost about $800 – $1,000 per model sample. On average, each small domestic manufacturer supplies seven different models of carriages/strollers to the U.S. market annually. Therefore, if third party testing were conducted every year on a single sample for each model, third party testing costs for each manufacturer would be about $5,600 – $7,000 annually. Based on a review of firm revenues, the impact of third party testing to ASTM F833–13 is unlikely to be significant if only one sample per model is required. However, if more than one sample would be needed to meet the testing requirements, it is possible that third party testing costs could have a significant impact on one or more of the small manufacturers.

Small Importers. Most small importers of carriages/strollers currently in compliance with F833–11 (13 of 22 small domestic importers) would likely continue to comply with the standard as it evolves. Any increase in production costs experienced by their suppliers may be passed on to them. Given the possibility that even firms with compliant products may opt to design a new carriage/stroller rather than retrofit their existing models, the costs associated with the added 2D folding frame requirement could be significant for some firms, especially those that do not follow the ASTM standard development process (as is the case with at least one small importer of compliant strollers).

Importers of carriages/strollers would need to find an alternate source if their existing supplier does not come into compliance with the requirements of the proposed rule (currently, nine importers of strollers may not be in compliance with F833–11). Some could respond to the rule by discontinuing the import of their noncomplying products, possibly discontinuing the product line altogether. The impact of such a decision could be mitigated by replacing the noncompliant carriage/stroller with a compliant carriage/stroller or by deciding to import an alternative product in place of the carriage/stroller. However, some of these firms have few or no other products in their product line.

Because many of these firms have low sales revenues and limited product lines apart from carriages/strollers and carriage/stroller accessories, it is possible that the proposed rule could have a significant impact on one or more importers. The proposed 18-month effective date would spread the costs of compliance over a longer period of time, mitigating the impact on all importers.

As is the case with manufacturers, all importers will be subject to third party testing and certification requirements,

and consequently, will experience costs similar to those for manufacturers if their supplying foreign firm(s) does not perform third party testing. The resulting costs could have a significant impact on a few small importers who must perform the testing themselves, even if only one sample per model were required.

Alternatives. Under the Danny Keysar Child Product Safety Notification Act, one alternative that would reduce the impact on small entities is to make the voluntary standard mandatory with no modifications. Doing so would eliminate the impact on the 19 small manufacturers and 13 small importers with compliant products. However, adopting the voluntary standard with no modifications may not substantially benefit firms with noncompliant products, as their carriages/strollers might still require redesign.

The proposed 18-month effective date will allow suppliers additional time to modify and/or develop compliant carriages/strollers and spread the associated costs over a longer period of time. However, the Commission could opt to set an even later effective date. Doing so could reduce further the impact on affected firms. A third alternative would be to set an earlier effective date. However, setting an earlier effective date could increase the impact of the rule on small entities.

VII. Environmental Considerations

The Commission's regulations address whether we are required to prepare an environmental assessment or an environmental impact statement. If our rule has ''little or no potential for affecting the human environment,'' it will be categorically exempted from this requirement. 16 CFR 1021.5(c)(1). The proposed rule falls within the categorical exemption.

VIII. Paperwork Reduction Act

This proposed rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). In this document, pursuant to 44 U.S.C. 3507(a)(1)(D), we set forth:

- A title for the collection of information;
- A summary of the collection of information;
- A brief description of the need for the information and the proposed use of the information;
- A description of the likely respondents and proposed frequency of response to the collection of information;
- An estimate of the burden that shall result from the collection of information; and
- Notice that comments may be submitted to the OMB.

Title: Safety Standard for Carriages and Strollers

Description: The proposed rule would require each stroller/carriage to comply with ASTM F833–13, Standard Consumer Safety Performance Specification for Carriages and Strollers. Sections 8 and 9 of ASTM F833–13 contain requirements for marking, labeling, and instructional literature. These requirements fall within the definition of ''collection of information,'' as defined in 44 U.S.C. 3502(3).

Description of Respondents: Persons who manufacture or import carriages and/or strollers.

Estimated Burden: We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

16 CFR Section	Number of respondents	Frequency of responses	Total annual responses	Hours per response	Total burden hours
1227	86	6	516	1	516

Our estimates are based on the following:

Section 8.1.1 of ASTM F833–13 requires that the name and the place of business (city, state, mailing address, including zip code, or telephone number) of the manufacturer, distributor, or seller be marked clearly and legibly on each product and its retail package. Section 8.1.2 of ASTM F833–13 requires a code mark or other means that identifies the date (month and year, as a minimum) of manufacture.

There are 86 known entities supplying strollers/carriages to the U.S. market. All 86 firms are assumed to use labels already on both their products and their packaging, but they might need to make some modifications to their existing labels. The estimated time required to make these modifications is about 1 hour per model. Each entity supplies an average of six different models of strollers/carriages; therefore, the estimated burden associated with labels is 1 hour per model × 86 entities × 6 models per entity = 516 hours. We estimate the hourly compensation for the time required to create and update labels is $27.12 (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' December 2012, Table 9, total compensation for all sales and office workers in goods-producing private industries: *http://www.bls.gov/ncs/*). Therefore, the estimated annual cost to industry associated with the labeling requirements is $13,993.92 ($27.12 per hour × 516 hours = $13,993.92). There are no operating, maintenance, or capital costs associated with the collection.

Section 9.1 of ASTM F833–13 requires instructions to be supplied with the product. Carriages/strollers are products that generally require assembly, and products sold without such information would not be able to compete successfully with products supplying this information. Under the OMB's regulations (5 CFR 1320.3(b)(2)), the time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the ''normal course of their activities'' are excluded from a burden estimate, where an agency demonstrates that the disclosure activities required to comply are ''usual and customary.'' Therefore, because we are unaware of carriages/strollers that generally require some installation, but lack any instructions to the user about such installation, we tentatively estimate that there are no burden hours associated with section 9.1 of ASTM F833–13 because any burden associated with supplying instructions with carriages/strollers would be ''usual and customary'' and not within the definition of ''burden'' under the OMB's regulations.

Based on this analysis, the proposed standard for strollers and carriages would impose a burden to industry of 516 hours at a cost of $13,993.92 annually.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. § 3507(d)), we have submitted the information collection requirements of this rule to the OMB for review.

Interested persons are requested to submit comments regarding information collection by June 19, 2013, to the Office of Information and Regulatory Affairs, OMB (see the **ADDRESSES** section at the beginning of this notice).

Pursuant to 44 U.S.C. 3506(c)(2)(A), we invite comments on:

- Whether the collection of information is necessary for the proper performance of the CPSC's functions, including whether the information will have practical utility;
- The accuracy of the CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to reduce the burden of the collection of information on respondents, including the use of automated collection techniques, when appropriate, and other forms of information technology; and the estimated burden hours associated with label modification, including any alternative estimates.

IX. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a consumer product safety standard is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances. Section 104(b) of the CPSIA refers to the rules to be issued under that section as ''consumer product safety rules,'' thus implying that the preemptive effect of section 26(a) of the CPSA would apply. Therefore, a rule issued under section 104 of the CPSIA will invoke the preemptive effect of section 26(a) of the CPSA when it becomes effective.

X. Certification and Notice of Requirements (NOR)

Section 14(a) of the CPSA imposes the requirement that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Section 14(a)(2) of the CPSA requires that certification of children's products subject to a children's product safety rule be based on testing conducted by a CPSC-accepted third party conformity assessment body. Section 14(a)(3) of the CPSA requires the Commission to publish a notice of requirements (NOR) for the accreditation of third party conformity assessment bodies (or laboratories) to assess conformity with a children's product safety rule to which a children's product is subject. The proposed rule for 16 CFR part 1227, ''Safety Standard for Carriages and Strollers,'' when issued as a final rule, will be a children's product safety rule that requires the issuance of an NOR.

The Commission recently published a final rule, *Requirements Pertaining to Third Party Conformity Assessment Bodies,* 78 FR 15836 (March 12, 2013), which is codified at 16 CFR part 1112 (referred to here as Part 1112). This rule will take effect June 10, 2013. Part 1112 establishes requirements for accreditation of third party conformity assessment bodies (or laboratories) to test for conformance with a children's product safety rule in accordance with Section14(a)(2) of the CPSA. The final rule also codifies all of the NORs that the CPSC had published to date. All new NORs, such as the carriages and strollers standard, require an amendment to part 1112. Accordingly, the proposed rule would amend part 1112 to include the carriages and strollers standard along with the other children's product safety rules for which the CPSC has issued NORs.

Laboratories applying for acceptance as a CPSC-accepted third party conformity assessment body to test to the new standard for carriages and strollers would be required to meet the third party conformity assessment body accreditation requirements in part 1112. When a laboratory meets the requirements as a CPSC-accepted third party conformity assessment body, it can apply to the CPSC to have 16 CFR part 1227, *Safety Standard for Carriages and Strollers,* included in its scope of accreditation of CPSC safety rules listed for the laboratory on the CPSC Web site at: *www.cpsc.gov/labsearch.*

In connection with the part 1112 rulemaking, CPSC staff conducted an analysis of the potential impacts on small entities of the proposed rule establishing accreditation requirements, 77 FR 31086, 31123–26 (May 24, 2012), as required by the Regulatory Flexibility Act and prepared an Initial Regulatory Flexibility Analysis (IRFA). Briefly, the IRFA concluded that the requirements would not have a significant adverse impact on a substantial number of small laboratories because no requirements are imposed on laboratories that do not intend to provide third party testing services under section 14(a)(2) of the CPSA. The only laboratories that are expected to provide such services are those that anticipate receiving sufficient revenue from providing the mandated testing to justify accepting the requirements as a business decision. Laboratories that do not expect to receive sufficient revenue from these services to justify accepting these requirements would not likely pursue accreditation for this purpose. Similarly, amending the part 1112 rule to include the NOR for the carriages and strollers standard would not have a significant adverse impact on small laboratories. Moreover, based upon the number of laboratories in the United States that have applied for CPSC acceptance of the accreditation to test for conformance to other juvenile product standards, we expect that only a few laboratories will seek CPSC acceptance of their accreditation to test for conformance with the carriages and strollers standard. Most of these laboratories will have already been accredited to test for conformance to other juvenile product standards and the only costs to them would be the cost of adding the carriages and strollers standard to their scope of accreditation. As a consequence, the Commission certifies that the proposed notice requirements for the carriages and strollers standard will not have a significant impact on a substantial number of small entities.

XI. Request for Comments

This proposed rule begins a rulemaking proceeding under section 104(b) of the CPSIA to issue a consumer product safety standard for carriages and strollers. We invite all interested persons to submit comments on any aspect of the proposed rule.

In particular, we note that there are a number of international standards applicable to carriages, strollers, or both (discussed above in IV. Other Standards, A. International Standards). Based on quantitative analysis, are there one or more international performance requirements that are substantially the same as, or are more stringent than, a related requirement or requirements in ASTM F833–13? If available, please submit any such analysis.

Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this notice.

List of Subjects

16 CFR Part 1112

Administrative practice and procedure, Audit, Consumer protection, Reporting and recordkeeping

requirements, Third party conformity assessment body.

16 CFR Part 1227

Consumer protection, Imports, Incorporation by reference, Infants and children, Labeling, Law enforcement, and Toys.

For the reasons discussed in the preamble, the Commission proposes to amend Title 16 of the Code of Federal Regulations as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

■ 1. The authority citation for part 1112 continues to read as follows:

Authority: Pub. L. 110–314, section 3, 122 Stat. 3016, 3017 (2008); 15 U.S.C. 2063.

■ 2. Amend Part 1112.15 by adding paragraph (b)(37) to read as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule and/or test method?

* * * * *

(b) The CPSC has published the requirements for accreditation for third party conformity assessment bodies to assess conformity for the following CPSC rules or test methods:

* * * * *

(37) 16 CFR part 1227, Safety Standard for Carriages and Strollers.

PART 1227—SAFETY STANDARD FOR CARRIAGES AND STROLLERS

■ 3. Add a new part 1227 to read as follows:

Sec.

1227.1 Scope.

1227.2 Requirements for Carriages and Strollers.

Authority: The Consumer Product Safety Improvement Act of 2008, Pub. L. 110–314, § 104, 122 Stat. 3016 (August 14, 2008); Pub. L. 112–28, 125 Stat. 273 (August 12, 2011).

§ 1227.1 Scope.

This part establishes a consumer product safety standard for carriages and strollers.

§ 1227.2 Requirements for Carriages and Strollers.

(a) Each carriage and stroller must comply with all applicable provisions of ASTM F833–13, Standard Consumer Safety Specification for Carriages and Strollers, approved on April 1, 2013. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Bar Harbor Drive, P.O. Box 0700, West Conshohocken, PA 19428; *http://www.astm.org/cpsc.htm.* You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal regulations/ibr_locations.html.*

(b) Comply with ASTM F833–13 standard with the following additions:

(1) In addition to complying with section 3.1.21 of ASTM F833–13, comply with the following:

(i) 3.1.22 *2D fold stroller, n*-a stroller that folds the handlebars and leg tubes only in the front-to-back (or back-to-front) direction.

(ii) [Reserved]

(2) Instead of complying with section 5.7 of ASTM F833–13, comply with the following:

(i) 5.7 *Scissoring, Shearing, and Pinching*

(ii) [Reserved]

(3) In addition to complying with section 5.7.3 of ASTM F833–13, comply with the following:

(i) 5.7.4 The frame folding action of a 2D fold stroller and convertible carriage/stroller (carriages are exempted from this requirement) shall be designed and constructed so as to prevent injury from scissoring, shearing, or pinching. Scissoring, shearing, or pinching that may cause injury exists when the edges of the rigid parts admit a 0.210-in (5.33-mm) diameter probe but do not admit a 0.375-in (9.53-mm) diameter probe when tested in accordance with 7.18. Units with a removable seat that prevent the complete folding of the unit when still attached are exempt from this requirement. Note: The evaluation at any given location is performed with the understanding that the probes are allowed to enter the location from any angle/direction.

(ii) [Reserved]

(4) In addition to complying with section 7.17 of ASTM F833–13, comply with the following:

(i) 7.18 *Frame Folding Scissoring, Shearing, and Pinching*

(A) 7.18.1 2D fold stroller and convertible carriage/stroller evaluation: Place the unit's seatback in the most upright position. Identify and mark the portion of the unit's rigid frame members and hinges that have potential scissoring, shearing, or pinching action during folding of the unit and are within or penetrate the access zone shown in the Fig X anywhere within the width of the stroller. All marked portions of the frame shall be evaluated per 7.18.2 or 7.18.3 as applicable. For units that feature two or more folding operations that are able to be carried out independently of each other, each operation must be independently evaluated per the test methods in 7.18.2 or 7.18.3 as applicable. This includes all seat-facing positions as recommended by the manufacturer and each occupant position on multiple occupancy units. Tray and front grab bar movements not a result of unfolding operation are excluded from this evaluation.

(B) 7.18.2 *For units where the front and rear wheels move toward each other during folding*—measure the change in distance (distance A, see Fig Y) between the front and rear wheel axle centers when moving from the completely folded to completely erected position. The measurement shall be taken with any swivel wheels in the locked position and in the plane where the axel centerlines are perpendicular to the fore/aft horizontal axis of the stroller. To determine the starting point for testing, start folding the unit from erect to folded/''closed'' position until the distance between the wheel axel centers is ⅔ of the total travel distance (see figure Y for an example). From this point check the marked portions identified in 7.18.1 for scissoring, shearing, and pinching in accordance with 5.7.4 while moving the stroller from this partially folded position to the fully erect and locked position.

(C) 7.18.3 *For units where the front and rear wheels axle centers move away from each other or do not change distance during folding*—place the unit in partially erect position so the handle tube is rotated 90 deg. from the fully erect and locked position. From this point assess the marked portions identified in 7.18.1 for scissoring, shearing, and pinching in accordance with 5.7.4 while moving the unit from this partially folded position to the fully erect and locked position.

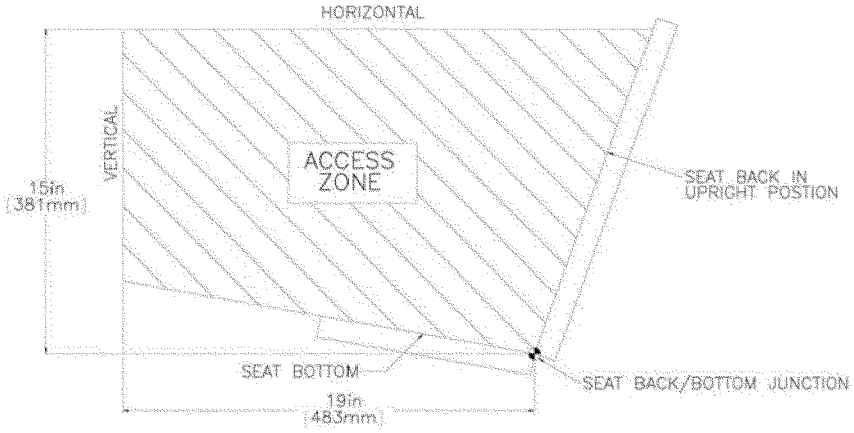

FIG. X, ACCESS ZONE

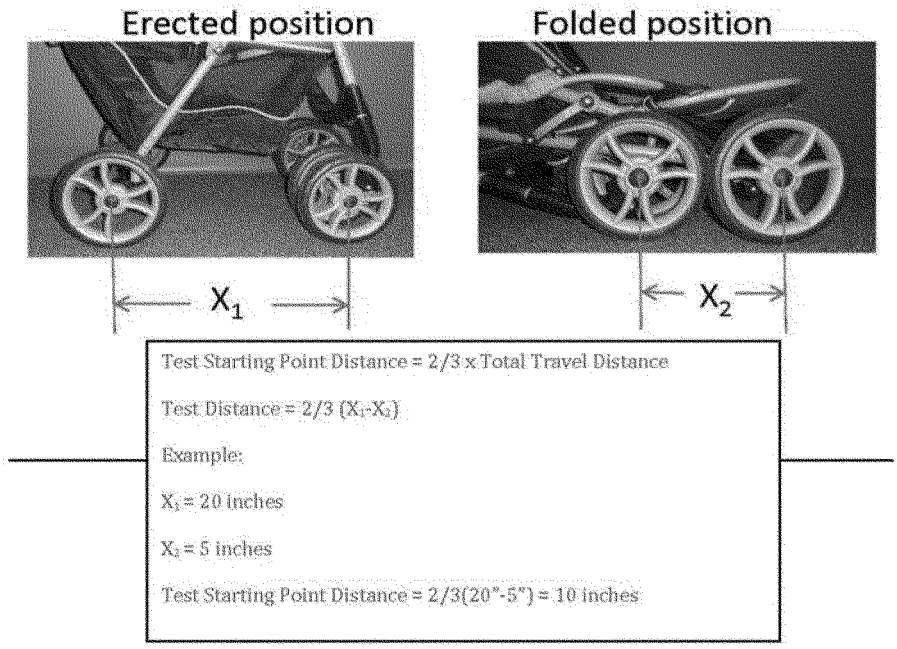

FIG. Y EXAMPLE OF TRAVEL DISTANCE CALCULATION

(ii) [Reserved]

(5) In addition to complying with the Appendix of ASTM F833–13, comply with the following:

(i) XI.18 *Rationale for 7.18:* A 3 year old child's sitting shoulder height is 15 inches and upper limb length is 19 inches based on 95th percentile 3-year old child's measurements (Pheasant, S.T. (1996). *Bodyspace: Anthropometrics, Ergonomics and the Design of Work* (2nd ed.). London, UK: Taylor & Francis). The access zone covers a child sitting in the most upright position reaching forward hence the reason for defining 19″ from the seat back junction.

(ii) [Reserved]

Dated: May 10, 2013.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2013–11638 Filed 5–17–13; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0059]

RIN 1625–AA00

Safety Zone; Big Bay Boom, San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish four temporary safety zones upon the navigable waters of San Diego

Bay for the Port of San Diego Big Bay Boom Fireworks display from 8:45 p.m. to 10 p.m. on July 4, 2013. These proposed safety zones are necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within these temporary safety zones during, immediately before and after the fireworks event unless authorized by the Captain of the Port or his designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before June 19, 2013.

Requests for public meetings must be received by the Coast Guard on or before June 3, 2013.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* 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. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant John Bannon, Chief of Waterways Management, U.S. Coast Guard Sector San Diego; telephone (619) 278–7261, email *John.E.Bannon@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. 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.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, 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 at *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, 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 telephone 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,* type the docket number [USCG–2013–0059] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

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 rule based on your comments.

2. 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,* type the docket number (USCG–2013–0059) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. 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.

3. 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).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. 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**.

B. Basis and Purpose

The Ports and Waterways Safety Act gives the Coast Guard authority to create and enforce safety zones. The Coast Guard is proposing four temporary safety zones on the navigable waters of the San Diego Bay for the Port of San Diego Big Bay Boom Independence Day Fireworks Display. The safety zones will include all navigable waters within 1,000 feet of each tug and barge. The tugs and barges will be located in the following approximate positions:

Shelter Island Barge: 32°42.8′ N, 117°13.2′ W
Harbor Island Barge: 32°43.3′ N, 117°12.0′ W
Embarcadero Barge: 32°42.9′ N, 117°10.8′ W
Seaport Village Barge: 32°42.2′ N, 117°10.0′ W

These temporary safety zones are necessary to provide for the safety of the fireworks barge crew and participating safety vessels, recreational boating spectators, and other users of the waterway from hazards associated with fireworks. Fireworks launched in close proximity to watercraft pose a significant risk to public safety and property. Such displays draw large numbers of spectators on vessels. The combination of a large number of spectators, congested waterways, darkness punctuated by bright flashes of light and burning debris has the potential to result in serious injuries or fatalities. The proposed safety zones will restrict vessels from operating within a portion of the navigable waters around the fireworks launch platforms during the enforcement period which will be immediately before, during, and immediately after the fireworks displays.

C. Discussion of Proposed Rule

The Coast Guard proposes to establish temporary safety zones that would be enforced from 8:45 p.m. until 10 p.m. on July 4, 2013. These proposed safety zones are necessary to provide for the safety of the crews, spectators, participants, and other vessels and users of the waterway. Persons and vessels would be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative. The proposed temporary safety zones would include a portion of waters in the San Diego Bay. Before the effective period, the Coast Guard will publish a Coast Guard District Eleven Local Notice to Mariners information on the event and associated safety zones. Immediately before and during the fireworks display, Coast Guard Sector San Diego Joint Harbor Operations Center will issues Broadcast Notice to Mariners on the location and enforcement of the safety zones.

Vessels will be able to transit the surrounding area and may be authorized to transit through the proposed safety zones with the permission of the Captain of the Port or the designated representative. Before activating the zones, the Coast Guard will notify mariners by appropriate means including but not limited to Local Notice to Mariners and Broadcast Notice to Mariners.

D. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This determination is based on the size, duration and location of the safety zones. The safety zones are relatively small in size, less than half a mile across, and short in duration, 75 minutes long. Although the safety zones would apply to multiple parts of San Diego Bay, traffic would be allowed to pass through the zone with the permission of the Captain of the Port. Additionally, before the effective period, the Coast Guard will publish a Local Notice to Mariners.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the impacted portions of San Diego Bay, CA from 8:45 p.m. to 10 p.m. on July 4, 2013.

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zones are relatively small in size, less than half a mile across, and short in duration, 75 minutes long. Although the safety zone would apply to multiple safety zones around the bay, traffic would be allowed to pass through the zones with the permission of the Coast Guard patrol commander. Before the effective period, the Coast Guard will publish a Local Notice to Mariners.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children From Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed 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. This proposed rule involves establishing a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–563 to read as follows:

§ 165.T11–563 Safety zone; Big Bay Boom; San Diego, CA.

(a) *Location.* This rule establishes four temporary safety zones, encompassing all navigable waters of San Diego Bay within a 1000-foot radius of fireworks launching points:

Shelter Island Barge: 32°42.8′ N, 117°13.2′ W

Harbor Island Barge: 32°43.3′ N, 117°12.0′ W

Embarcadero Barge: 32°42.9′ N, 117°10.8′ W

Seaport Village Barge: 32°42.2′ N, 117°10.0′ W

(b) *Enforcement period.* This section will be enforced from 8:45 p.m. to 10 p.m. on July 4, 2013. Before the effective period, the Coast Guard will publish a Local Notice to Mariners (LNM). If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *designated representative* means any commissioned, warrant, or petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) Mariners can request permission to transit through the safety zone from the Patrol Commander. The Patrol Commander can be contacted on VHF–FM channels 16 and 23.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: May 2, 2013.

S.M. Mahoney,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2013–11751 Filed 5–17–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0904, FRL–9815–3]

Partial Approval and Partial Disapproval of Air Quality State Implementation Plans; Arizona; Regional Haze Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve in part and disapprove in part revisions to Arizona's State Implementation Plan (SIP) for its regional haze program based on our evaluation of its supplemental submittal dated May 3, 2013. The State's new submittal revises Arizona's SIP that was submitted on February 28, 2011. The new revisions are in response to EPA's proposed rule published in the **Federal Register** on December 21, 2012. Specifically, we propose to approve Arizona's most recent emissions inventory for 2008, the reasonable progress analysis of coarse mass and fine soils, and aspects of the analyses and determinations of Best Available Retrofit Technology (BART) controls for four sources. These sources are Freeport-McMoRan Incorporated (FMMI) Miami Smelter, American Smelting and Refining Company (ASARCO) Hayden Smelter, Catalyst Paper, and Arizona Electric Power Cooperative (AEPCO) Apache Generating Station. However, we are proposing to disapprove other revisions to the reasonable progress analysis and some aspects of the revised BART analyses and determinations. We describe in today's action the major elements of the State's new SIP submittal and our assessment in terms of why we are proposing to approve or disapprove these revised elements. Today's action does not address any other parts of Arizona's SIP. Regional haze is caused by emissions of air pollutants from numerous sources located over a broad geographic area. The Clean Air Act (CAA) requires states to adopt and submit to EPA SIPs that assure reasonable progress toward the national goal of achieving natural visibility conditions by 2064 in 156

national parks and wilderness areas designated as Class I areas.

DATES: Written comments must be received by the designated contact at the address below on or before June 19, 2013.

ADDRESSES: See the General Information section for further instructions on where and how to learn more about this proposed rule and how to submit comments.

FOR FURTHER INFORMATION CONTACT: Gregory Nudd, U.S. EPA, Region 9, Planning Office, Air Division, Air-2, 75 Hawthorne Street, San Francisco, CA 94105. Gregory Nudd can be reached at telephone number (415) 947–4107 and via electronic mail at *r9azreghaze@epa.gov.*

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(1) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(2) The initials *ADEQ* mean or refer to the Arizona Department of Environmental Quality.

(3) The words *Arizona* and *State* mean the State of Arizona.

(4) The initials *BART* mean or refer to Best Available Retrofit Technology.

(5) The term *Class I area* refers to a mandatory Class I Federal area.

(6) The initials *CBI* mean or refer to Confidential Business Information.

(7) The words *we, us, our* or *EPA* mean or refer to the United States Environmental Protection Agency.

(8) The initials *FIP* mean or refer to Federal Implementation Plan.

(9) The initials *FLMs* mean or refer to Federal Land Managers.

(10) The initials *IMPROVE* mean or refer to Interagency Monitoring of Protected Visual Environments monitoring network.

(11) The initials *LTS* mean or refer to Long-term Strategy.

(12) The initials *NAAQS* mean or refer to National Ambient Air Quality Standards.

(13) The initials NH_3 mean or refer to ammonia.

(14) The initials NO_X mean or refer to nitrogen oxides.

(15) The initials *NM* mean or refer to National Monument.

(16) The initials *NP* mean or refer to National Park.

(17) The initials *OAQPS* mean or refer to the Office of Air Quality Planning and Standards.

(18) The initials *PM* mean or refer to particulate matter.

(19) The initials $PM_{2.5}$ mean or refer to fine particulate matter with an aerodynamic diameter of less than 2.5 micrometers.

(20) The initials PM_{10} mean or refer to particulate matter with an aerodynamic diameter of less than 10 micrometers (coarse particulate matter).

(21) The initials *PSD* mean or refer to Prevention of Significant Deterioration.

(22) The initials *PTE* mean or refer to potential to emit.

(23) The initials *RH* mean or refer to regional haze.

(24) The initials *RHR* mean or refer to the Regional Haze Rule, originally promulgated in 1999 and codified at 40 CFR 51.301–309.

(25) The initials *RP* mean or refer to Reasonable Progress.

(26) The initials *RPG* or *RPGs* mean or refer to Reasonable Progress Goal(s).

(27) The initials *SIP* mean or refer to State Implementation Plan.

(28) The initials *SNCR* mean or refer to selective non-catalytic reduction.

(29) The initials SO_2 mean or refer to sulfur dioxide.

(30) The initials *SRPMIC* mean or refer to Salt River Pima-Maricopa Indian Community.

(31) The initials *tpy* mean tons per year.

(32) The initials *TSD* mean or refer to Technical Support Document.

(33) The initials *VOC* mean or refer to volatile organic compounds.

(34) The initials *WEP* mean or refer to Weighted Emissions Potential.

(35) The initials *WRAP* mean or refer to the Western Regional Air Partnership.

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I. General Information

A. Docket

The proposed action relies on documents, information and data that are listed in the index on *http://www.regulations.gov* under docket number EPA–R09–OAR–2012–0904. Although listed in the index, some information is not publicly available (*e.g.,* Confidential Business Information (CBI). Certain other material, such as copyrighted material, is publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Planning Office of the Air Division, AIR–2, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 9–5:00 PST, excluding Federal holidays.

B. Instructions for Submitting Comments to EPA

Written comments must be received at the address below on or before June 19, 2013. Submit your comments, identified by Docket ID No. EPA–R09–OAR–2012–0904, by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-Mail: r9azreghaze@epa.gov.*
- *Fax:* 415–947–3579 (Attention: Gregory Nudd).
- *Mail, Hand Delivery or Courier:* Gregory Nudd, EPA Region 9, Air Division (AIR–2), 75 Hawthorne Street, San Francisco, California 94105. Hand and courier deliveries are only accepted Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

EPA's policy is to include all comments received in the public docket without change. We may make comments available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or that is otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly

to EPA, without going through *http://www.regulations.gov,* we will include your email address as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption, and be free of any defects or viruses.

C. Submitting Confidential Business Information

Do not submit CBI to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim as CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, you must submit a copy of the comment that does not contain the information claimed as CBI for inclusion in the public docket. We will not disclose information so marked except in accordance with procedures set forth in 40 CFR part 2.

D. Tips for Preparing Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (*e.g.,* subject heading, **Federal Register** date and page number).
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the identified comment period deadline.

II. Overview of Proposed Actions

EPA proposes to approve in part and disapprove in part a Regional Haze (RH) SIP revision submitted by ADEQ on May 3, 2013, which revises certain elements of its RH SIP that we proposed to disapprove on December 21, 2012.[1] ADEQ previously submitted its RH SIP to EPA Region 9 on February 28, 2011, to meet the requirements of Section 308 of the Regional Haze Rule (RHR). EPA Region 9 and ADEQ have engaged in a collaborative effort to clarify and resolve some of the issues in our proposal of December 21, 2012, that resulted in ADEQ's SIP revision of May 3, 2013. In this notice, we propose to approve Arizona's emissions inventory for 2008, its reasonable progress analysis for coarse mass and fine soils, and certain aspects of the analyses and determinations of BART controls for four sources. These sources are the FMMI Miami Smelter, ASARCO Hayden Smelter, Catalyst Paper, and AEPCO Apache Generating Station. In summary, we propose to approve a revised set of BART-eligible units for the Miami and Hayden smelters; the State's finding that a BART analysis is not required for Catalyst Paper; and a clarification in the application of the emissions limit to Apache Unit 1. However, we are proposing to disapprove ADEQ's new determination that the Miami Smelter is exempt from a BART analysis for NO_X controls, and that the Hayden Smelter is exempt from a BART analysis for PM_{10}. Despite its finding that the Hayden Smelter is exempt from a BART analysis for PM_{10}, ADEQ nonetheless performed such an analysis, and we are proposing to approve ADEQ's determination that BART for PM_{10} is no additional controls. We are also proposing to approve a correction to ''Table 6.1—Baseline Conditions for 20% Worst Days'' in the Arizona's RH SIP and are making a corresponding correction to ''Table 4—Visibility Calculations for Arizona Class I Areas'' in our December 21, 2012, notice (77 FR 75704) in which the baseline for Saguaro East & West were reversed. All other elements of the SIP addressed in our proposal dated December 21, 2012, remain unaffected. We will address both our proposal of December 21, 2012, and today's proposed action in our final rule due in July 2013. For background information on visibility impairment and the Regional Haze Rule's SIP requirements, please refer to those sections in our proposed rule dated December 21, 2012.

III. Summary of State and EPA Actions on Regional Haze

A. EPA's Schedule To Act on Arizona's RH SIP

EPA received a notice of intent to sue in January 2011 stating that we had not met the statutory deadline for promulgating Regional Haze Federal Implementation Plans (FIPs) and/or approving Regional Haze SIPs for dozens of states, including Arizona. This notice was followed by a lawsuit filed by several advocacy groups (Plaintiffs) in August 2011.[2] In order to resolve this lawsuit and avoid litigation, EPA entered into a Consent Decree with the Plaintiffs, which sets deadlines for action for all of the states covered by the lawsuit, including Arizona. This decree was entered and later amended by the Federal District Court for the District of Columbia over the opposition of Arizona.[3] Under the terms of the Consent Decree, as amended, EPA is currently subject to three sets of deadlines for taking action on Arizona's Regional Haze SIP as listed in Table 1.[4]

TABLE 1—CONSENT DECREE DEADLINES FOR EPA TO ACT ON ARIZONA'S RH SIP

EPA Actions	Proposed rule	Final rule
Phase 1:		
BART determinations for Apache, Cholla and Coronado	July 2, 2012[1]	November 15, 2012[2].
Phase 2:		
All remaining elements of Arizona's RH SIP	December 8, 2012[3]	July 15, 2013.
Phase 3		

[1] Proposed rule titled ''Partial Approval and Disapproval of Air Quality Implementation Plans; Arizona; Regional Haze and Visibility Impacts of Transport, Ozone and Fine Particulates'' published in the **Federal Register** on December 21, 2012 (77 FR 75704).

[2] *National Parks Conservation Association* v. *Jackson* (D.D.C. Case 1:11–cv–01548).

[3] *National Parks Conservation Association* v. *Jackson* (D.D.C. Case 1:11–cv–01548), Memorandum Order and Opinion (May 25, 2012) and Minute Order (July 2, 2012).

[4] *National Parks Conservation Association* v. *Jackson* (D.D.C. Case 1:11–cv–01548) Minute Order (November 13, 2012).

TABLE 1—CONSENT DECREE DEADLINES FOR EPA TO ACT ON ARIZONA'S RH SIP—Continued

EPA Actions	Proposed rule	Final rule
FIP for disapproved elements of Arizona's RH SIP (if required)	September 6, 2013	February 6, 2014.

[1] Published in the FEDERAL REGISTER on July 20, 2012, 77 FR 42834.
[2] Published in the FEDERAL REGISTER on December 5, 2012, 77 FR 72512.
[3] Published in the FEDERAL REGISTER on December 21, 2012, 77 FR 75704.

B. History of State Submittals and EPA Actions

Since four of Arizona's twelve mandatory Class I Federal areas are on the Colorado Plateau, the State had the option of submitting a Regional Haze SIP under section 309 of the Regional Haze Rule. A SIP that is approved by EPA as meeting all of the requirements of section 309 is ''deemed to comply with the requirements for reasonable progress with respect to the 16 Class I areas [on the Colorado Plateau] for the period from approval of the plan through 2018.'' [5] When these regulations were first promulgated, 309 submissions were due no later than December 31, 2003. Accordingly, the ADEQ submitted to EPA on December 23, 2003, a 309 SIP for Arizona's four Class I areas on the Colorado Plateau. ADEQ submitted a revision to its 309 SIP, consisting of rules on emissions trading and smoke management, and a correction to the State's regional haze statutes, on December 31, 2004. EPA approved the smoke management rules submitted as part of the 2004 revisions,[6] but did not propose or take final action on any other portion of the 309 SIP at that time.

In response to an adverse court decision,[7] EPA revised 40 CFR 51.309 on October 13, 2006, making a number of substantive changes and requiring states to submit revised 309 SIPs by December 17, 2007.[8] Subsequently, ADEQ sent a letter to EPA dated December 14, 2008, acknowledging that it had not submitted a SIP revision to address the requirements of 309(d)(4) related to stationary sources and 309(g), which governs reasonable progress requirements for Arizona's eight mandatory Class I areas outside of the Colorado Plateau.[9] EPA proposed on February 5, 2013,[10] to disapprove Arizona's 309 SIP revisions except for the smoke management rules that we had previously approved.

EPA made a finding on January 15, 2009, that 37 states, including Arizona, had failed to make all or part of the required SIP submissions to address regional haze.[11] Specifically, EPA found that Arizona failed to submit the plan elements required by 40 CFR 309(d)(4) and (g). EPA sent a letter to ADEQ on January 14, 2009, notifying the state of this failure to submit a complete SIP. ADEQ later decided to submit a SIP under section 308, instead of section 309.

ADEQ adopted and transmitted its Regional Haze SIP under Section 308 of the Regional Haze Rule to EPA Region 9 in a letter dated February 28, 2011. The plan was determined complete by operation of law on August 28, 2011.[12] The SIP was properly noticed by the State and available for public comment for 30 days prior to a public hearing held in Phoenix, Arizona, on December 2, 2010. Arizona included in its SIP responses to written comments from EPA Region 9, the National Park Service, the US Forest Service, and other stakeholders including regulated industries and environmental organizations. The Arizona RH SIP is available to review in the docket for this proposed rule.[13]

As indicated in Table 1, the first phase of EPA's action on Arizona's RH SIP addressed three BART sources. The final rule for this phase (a partial approval and partial disapproval of the State's plan and a partial FIP) was signed by the Administrator on November 15, 2012, and published in the **Federal Register** on December 5, 2012. The emission limits on the three sources will improve visibility by reducing NO_X emissions by about 22,700 tons per year. In the second phase of our action, we proposed on December 21, 2012, to approve in part and disapprove in part the remainder of Arizona's regional haze plan. ADEQ submitted a supplemental SIP on May 3, 2013, to correct certain deficiencies identified in that proposal. Today's action supersedes that proposal with respect to those elements of the SIP addressed in the State's supplemental SIP that are discussed herein. In our final rule due for signature by July 15, 2013, we will act on the proposed approvals and proposed disapprovals in the notices published on December 21, 2012, and today. A proposed FIP due for signature by September 6, 2013, will address all the disapproved elements of the State's plan from Phase 2 (See Table 1).

IV. EPA's Evaluation of Arizona's Revised RH SIP

A. Emissions Inventory for 2008

In our proposed rule of December 21, 2012, we noted that the State failed to provide the most recent emissions inventory available as required by the RHR in 40 CFR 51.308(d)(4)(v). ADEQ provided a 2008 emissions inventory in its submittal dated May 3, 2013, to fulfill this requirement. The 2008 inventory is described below in the context of the 2002 and 2018 inventories discussed in our proposal of December 21, 2012, and is followed by our assessment. EPA proposes to find that the State has met this requirement of the RHR.

ADEQ's Submittal: The emissions inventories for 2002, 2008 and 2018 are summarized by source and pollutant in Tables 2 and 3. The emissions inventories consist of estimated annual emissions in tons per year (tpy) for ten source categories and six pollutants. The source categories are: point sources, anthropogenic fire, wildfire, biogenic, area sources, on-road mobile, off-road mobile, road dust, fugitive dust and windblown dust. The haze producing pollutants are: NO_X, SO_2, VOC, $PM_{2.5}$, PM_{coarse}[14] and NH_3. The 2018 emissions estimates do not include the substantial reductions in NO_X emissions from point sources required under EPA's Phase 1 BART FIP.[15]

[5] 40 CFR 51.309(a).
[6] 71 FR 28270 and 72 FR 25973.
[7] Center for Energy and Economic Development v. EPA, 398 F.3d 653 (D.C. Circuit 2005).
[8] 71 FR 60612.
[9] Letter from Stephen A. Owens, ADEQ, to Wayne Nastri, EPA (December 14, 2008).
[10] 78 FR 8083.
[11] 74 FR 2392.
[12] CAA section 110(k)(1)(B).
[13] ''Arizona State Implementation Plan, Regional Haze Under Section 308 Of the Federal Regional Haze Rule,'' February 28, 2011.
[14] These are particles smaller than 10 microns, but larger than 2.5 microns.
[15] 77 FR 72512 (December 5, 2012).

TABLE 2—EMISSIONS INVENTORY FOR ARIZONA REGIONAL HAZE POLLUTANTS BY SOURCE CATEGORY FOR 2002, 2008 AND 2018

[Tons per year] [16]

Category	SO_2 [tpy]			NO_X [tpy]			VOC [tpy]		
	2002	2008	2018	2002	2008	2018	2002	2008	2018
Point Sources	94,716	79,015	67,429	69,968	60,759	68,748	5,464	3,489	9,401
Anthropogenic Fire	190	n/a	181	725	n/a	676	855	n/a	745
Wildfire	4,369	607	4,369	16,493	3,513	16,494	36,377	4,989	36,381
Biogenic	0	0	0	27,664	15,256	27,664	1,576,698	686,255	1,576,698
Area Source	2,677	3,678	3,408	9,049	39,403	12,783	102,918	100,256	170,902
On-road Mobile	2,715	812	762	178,009	137,555	53,508	110,424	54,589	52,872
Off-road Mobile	4,223	673	546	66,414	33,857	43,249	56,901	42,297	36,033
Total	108,890	84,784	76,695	368,322	290,343	223,122	1,889,637	890,158	1,883,032

TABLE 3—EMISSIONS INVENTORY FOR ARIZONA REGIONAL HAZE POLLUTANTS BY SOURCE CATEGORY FOR 2002, 2008 AND 2018

[Tons per year] [17]

Category	NH_3 [tpy]			$PM_{2.5}$ [tpy]			PM_{coarse} [tpy]		
	2002	2008	2018	2002	2008	2018	2002	2008	2018
Point Sources	531	971	729	934	5,127	1,421	8,473	5,260	8,650
Anthropogenic Fire	97		73	1,065	n/a [18]	927	17	n/a	9
Wildfire	3,781	n/a	3,782	61,225	8,019	61,230	10,107	1,692	10,108
Area Source	32,713	34,878	36,248	9,400	15,688	13,727	1,384	2,389	1,766
On-road Mobile	5,035	2,377	7,606	3,344	8,736	2,318	1,004	5,597	1,258
Off-road Mobile [19]	48	40	64	4,758	3,293	3,032		162	
Road and Fugitive Dust		n/a		10,647	26,037	15,796	79,315	141,117	126,766
Windblown Dust	n/a	n/a	n/a	6,422	9,647	6,422	57,796	87,431	57,796
Total	42,205	38,265	48,502	97,795	76,547	104,873	158,096	243,648	206,353

EPA's Assessment: The 2008 inventory supplied by ADEQ was derived from the results of the WestJump2008[20] project conducted by the Western Regional Air Partnership (WRAP). The EPA has reviewed the source data and methods underlying ADEQ's 2008 emissions inventory,[21] which appear to be the most recent and accurate available for the year 2008. While there are a few missing data elements (*e.g.,* anthropogenic fire) in the WRAP's inventory, these omissions do not impact other requirements of the RHR, as the information is available for the base year and future year inventories. The EPA proposes to find that the 2008 inventory is based on the most current and reliable activity data and emissions factors, and is sufficiently accurate and complete to meet the needs of the Regional Haze SIP.

The total SO_2 and NO_X emissions in 2008 are consistent with what one would expect from the trend indicated by the 2002 and 2018 inventories. For these two pollutants of concern, the trends in point source and mobile source emissions are promising, with NO_X emissions from point sources apparently decreasing faster than expected. We also note that wildfires were less prevalent in 2008 than in 2002. In contrast, the area source category is increasing for both NO_X and SO_2. Much of the surprising increase in 2008 is due to changes in methods. For example, the 2002 and 2018 inventories categorize locomotive emissions as off-road mobile, whereas the 2008 emissions inventory categorizes them as area sources. This particular issue accounts for over 22,000 tpy of NO_X in 2008.[22] The apparent steady growth in NO_X and SO_2 emissions from area sources will need more attention in future planning periods as other source categories are controlled and contribute less to visibility impairment. The State should carefully review the assumptions and data underlying the emissions estimates for the area source category in future RH SIP submittals to understand the extent of these sources and properly assess whether they are reasonable to control.

The significant drop in VOC emissions was due to a change in the method for calculating biogenic emissions. This is not an actual change in VOC emissions, but rather a more accurate estimate of biogenic emissions than was previously available. This change in method (along with a coincidental decrease in wildfire activity in 2008) increases the relative importance of anthropogenic VOC

[16] Emissions for 2002 and 2018 are from Tables 8.1, 8.2 and 8.8 in the Arizona RH SIP. Emissions for 2008 are from Tables 2, 3 and 5 in the Arizona RH SIP Technical Support Document (''Supplemental TSD'') dated May 2, 2013. The ''Area Oil and Gas'' category listed in these tables is excluded from this summary because the total emissions in this category are very small.

[17] Emissions for 2002 and 2018 are from Tables 8.3–8.7 in the Arizona RH SIP. Emissions for 2008 data are from the Supplemental TSD, Tables 4, 6–9. For the purposes of this analysis, primary organic aerosols, elemental carbon and fine soil are assumed to be in the $PM_{2.5}$ partition. These were combined for ease of comparison with the IMPROVE monitoring data.

[18] The Supplemental TSD combined all fire emissions into ''Natural Fire''. EPA assumes that the proportions are comparable to the 2002 partition between natural and anthropogenic fire.

[19] The Arizona RH SIP did not include any PM_{10} emissions directly attributed to off-road vehicles.

[20] Arizona RH SIP Supplement, Section 8.6.2. More information about WestJump is available at *http://www.wrapair2.org/WestJumpAQMS.aspx.*

[21] Supplemental TSD, Table 1.

[22] Supplemental TSD, page 23.

emissions compared to natural sources of VOC. The anthropogenic VOC emissions were estimated to be less than 15 percent of the total emissions in 2002. With the new, more accurate method of calculating biogenic emissions, the anthropogenic portion is now estimated to be 22 percent of the total VOC emissions. This new estimate of a higher anthropogenic fraction has the potential to make VOC emissions a more important factor in reasonable progress analyses for future planning periods. However, since VOC emissions are still primarily from natural and uncontrollable sources, EPA is not changing our proposal to approve the State's decision to exclude VOC emissions from their reasonable progress analysis for this first planning period.

The emissions inventories for particulate matter remain highly uncertain. This is not surprising, as the emissions are driven, in large part, by three categories that are difficult to accurately calculate: fugitive dust, road dust and windblown dust. There is a great deal of uncertainty in the calculations of these categories. EPA is working closely with the State on this issue to ensure compliance with the PM_{10} NAAQS in Maricopa and Pinal Counties. Given the current uncertainly in these inventory data for coarse mass and fine soil in Arizona, it is more informative to review the IMPROVE monitoring data for these pollutants. An analysis of the monitoring data [23] shows that the degree of visibility impairment from these compounds is generally stable and not increasing. In conclusion, EPA has reviewed and assessed the 2008 emissions inventory for Arizona and proposes to approve that it meets the requirement in the RHR for the ''most recent inventory.''

B. Reasonable Progress Goals

In our previous **Federal Register** notice (77 FR 75727), we proposed to disapprove the State's Reasonable Progress Goals (RPGs) for the worst 20 percent of days. We explained that, since Arizona's RPGs for the worst 20 percent of days provide for a rate of improvement in visibility slower than the rate needed to show attainment of natural conditions by 2064 (*i.e.,* the ''uniform rate of progress'' or URP), the RHR requires the State to demonstrate why its RPGs are reasonable and why RPGs consistent with the URP are not reasonable.[24] This demonstration must be based on an analysis of four factors: costs of compliance; time necessary for compliance; energy and non-air quality environmental impacts of compliance; and remaining useful life of any potentially affected sources (collectively ''the four RP factors'').[25] We proposed to find that the State had not conducted an adequate analysis of these four factors to support its determination that it was not reasonable to achieve the URP at any of the State's Class I areas. Nonetheless, based on our own supplemental analysis, we proposed to approve the State's finding that it is not reasonable to require additional controls on mobile sources of NO_X, SO_2 or VOCs or on point sources of SO_2 during this planning period. By contrast, we proposed to disapprove the State's findings with respect to coarse mass and fine soil emissions, point sources of NO_X, and area sources of NO_X and SO_2.

The supplemental regional haze SIP submitted by the State on May 3, 2013, includes a new Chapter 11 (''Reasonable Progress Goal Demonstration''), which supersedes the version of Chapter 11 included in the SIP submitted on February 28, 2011. Sections 11.1 (''Reasonable Progress Requirements''), 11.2 (''The Process for Determining Reasonable Progress'') and 11.3 (''Summary of the Four-Factor Analysis'') of the 2013 version of Chapter 11 are essentially identical to the 2011 version, except that subsection 11.3.3 now includes a four-factor analysis for Phoenix Cement Company's (PCC) plant near Clarkdale, Arizona. Sections 11.4 (''Affirmative Demonstration of Reasonable Progress'') and 11.5 (''Demonstration of Reasonable Progress Goals for 20% Worst Days'') contain new analyses of trends in monitored visibility conditions, which are set forth in greater detail in a Technical Support Document (''Supplemental TSD'') submitted with the supplemental SIP revision. Section 11.6 (''Affirmative Demonstration of Reasonable Progress'') summarizes the results of these new analyses and Section 11.7 (''Major Reductions in Mobile Sources Emissions by 2018'') provides an updated summary of reductions in emissions of SO_2, NO_X and VOCs from mobile sources, reflecting actual reductions that occurred between 2002 and 2008. Section 11.8 (''Emission Reductions to With Respect to Out-of-State Class I Areas'') states that: ''Based on the demonstration in the preceding chapters showing reasonable progress at Arizona's Class I areas, ADEQ asserts that the measures contained in the SIP are adequate to achieve reductions necessary to prevent visibility impairment at Class I areas in neighboring states.'' [26] Sections 11.9 (''Additional Emission Reductions Expected by 2018 due to the Long-Term Strategy'') and 11.10 (''Long-Term Strategy 'Next Steps' in Analyzing Major Source Categories'') of the supplement are essentially identical to subsections 11.4.5 and 11.4.6 of the SIP submittal in 2011. Likewise, section 11.11 (''Years to Reach Natural Conditions Based on Reasonable Progress Goals'') is essentially identical to section 11.5 of the submittal in 2011.

Based on the new analyses contained in the supplemental submittal and our own supplemental analysis, we are now proposing to approve the State's finding that it is not reasonable to require additional controls on sources of coarse mass and fine soil during the first planning period. However, the supplemental SIP did not provide sufficient analysis for EPA to change our proposal with respect to point sources of NO_X or area sources of NO_X and SO_2. Therefore, we are still proposing to disapprove the State's determinations that it is not reasonable to control point sources and area sources for the stated pollutants. The following is our evaluation of the new analyses provided in Chapter 11 of the State's supplemental submittal.

1. Coarse Mass and Fine Soil

The EPA is proposing to concur with the State's decision to exclude coarse mass and fine soils from its four-factor reasonable progress analysis for the first planning period. Our concurrence is based on Arizona's supplemental analysis of monitoring data and our own analysis of potential emission sources.

ADEQ's Submittal: Arizona provided in its supplemental submittal an analysis of coarse mass and fine soil based on monitoring data.[27] The monitoring data show that visibility impairment from coarse mass and fine soil is increasing in some Class I areas and decreasing in other areas, but is not changing significantly on a statewide basis.[28] This indicates, even with statewide population growth, that there was no resulting general increase in impairment from these pollutants. The State also found that IMPROVE monitors located close together showed significant differences in coarse mass and fine soil impairment on the worst 20 percent of days.[29] This variation

[23] Supplemental TSD, Table 14 and Section III.D.

[24] 77 FR 75728.

[25] 40 CFR 51.308(d)(1)(i)(A); 51.308(d)(1)(ii).

[26] Arizona RH SIP Supplement, page 97.

[27] Supplemental TSD, Table 14 and Section III.D.

[28] See the ''11-year trend for 20% worse coarse matter days,'' Supplemental TSD, Table 16, Column 1.

[29] Supplemental TSD, Table 14 and Section III.D.

suggests that local sources may contribute significantly to coarse mass and fine soil impairment. In order to investigate the potential contributions of sources close to the Class I areas, ADEQ examined the monitored visibility impairment at Class I areas near large stationary sources of PM_{10}.[30] ADEQ found no relationship between an area's proximity to large sources of PM_{10} and significantly greater levels of visibility impairment due to coarse mass that would explain the observed concentrations statewide. This analysis of the monitoring data implies that there may be another cause of the visibility impairment from coarse mass, since the size and proximity of the existing point sources of PM_{10} do not solely explain the variability in the visibility impairment from these pollutants.

EPA's Assessment: EPA finds that Arizona's analysis of monitoring data for coarse mass and fine soil was conducted in a scientifically valid manner. However, we also find that this analysis alone is insufficient to support Arizona's decision to exclude these pollutants from a complete four-factor analysis. Therefore, we conducted a supplemental analysis, in which we reviewed each of the seven categories of coarse mass and fine soil emission sources to determine if additional controls on these categories may be needed to ensure reasonable progress in this planning period. These categories are: point, area, on-road mobile, off-road mobile, fugitive and road dust, windblown dust, and fire. We find that, since emissions from fire are predominantly from uncontrollable wildfires, this source does not need to be addressed.[31] Likewise, windblown dust may be excluded to the extent that it is from natural sources. According to the analysis supplied in Arizona's supplemental TSD, the vast majority of emissions from windblown dust on a statewide, annual basis are from uncontrollable, natural sources.[32] Therefore, this source category can also be excluded from the reasonable progress analysis for this planning period.

In the case of point sources, Arizona's analysis of the monitoring data indicates that it is not clear whether coarse mass emissions from these sources significantly contribute to visibility impairment at the Class I areas. Given the mixed results among the Class I areas, we are not confident that controls on particular point sources will be effective in reducing visibility impairment. Therefore, we propose to concur with the State's conclusion that point sources should be excluded from this area of the reasonable progress analysis. Mobile sources (on-road and off-road) comprise 12 percent of the 2008 coarse mass inventory. These sources are already subject to stringent EPA rules limiting particulate matter emissions. The full benefits of these rules will be realized before the end of this planning period.[33] EPA concurs that this category of sources does not need to be considered for additional controls to ensure reasonable progress.

The remaining category, fugitive and road dust, is a significant portion of the inventory, comprising 58 percent of the State's total coarse mass emissions. While there is no clear indication that dust emissions are causing or contributing to visibility impairment at Class I areas, it is important to note that the State is making substantial reductions in these emissions in an effort to ensure compliance with the PM_{10} NAAQS. EPA has approved into the Arizona SIP various rules adopted by Maricopa and Pinal Counties related to fugitive and road dust, as shown in Table 4. Moreover, Maricopa County (which comprises 60 percent of the State's population) has a State-approved plan,[34] currently under EPA review, that makes additional reductions in fugitive and road dust emissions. A similar plan is under development for Pinal County.[35] Given, the lack of a clear relationship between dust emissions and observed visibility impairment at Class I areas, EPA proposes to approve ADEQ's determination that it is not reasonable to consider further controls on this source category at this time. However, it will be necessary to more closely examine the potential visibility impacts of fugitive and road dust on Arizona's Class I areas in future planning periods.

TABLE 4—RULES TO CONTROL FUGITIVE DUST AND ROAD DUST

Rule No.	Title	Adoption or amendment date	FR publication date	FR Citation
Maricopa County Air Quality Department				
310	Fugitive Dust From Dust-Generating Operations	01/27/2010	12/15/2010	75 FR 78167
310.01	Fugitive Dust From Non-Traditional Sources of Fugitive Dust	01/27/2010	12/15/2010	75 FR 78167
Pinal County Air Quality Control District				
4–2–020	Fugitive Dust—General	12/04/2002	04/06/2010	75 FR 17307
4–2–030	Fugitive Dust—Definitions	12/04/2002	04/06/2010	75 FR 17307
4–2–040	Standards [Fugitive Dust]	06/29/1993	08/01/2007	72 FR 41896
4–2–050	Monitoring and Records [Fugitive Dust]	06/29/1993	08/01/2007	72 FR 41896
4–4–100	General Provisions	06/03/2009	04/06/2010	75 FR 17307
4–4–110	Definitions	06/03/2009	04/06/2010	75 FR 17307
4–4–120	Objective Standards	06/03/2009	04/06/2010	75 FR 17307
4–4–130	Work Practice Standards	06/03/2009	04/06/2010	75 FR 17307
4–4–140	Recordkeeping and Records Retention	06/03/2009	04/06/2010	75 FR 17307

[30] PM_{10} includes both the coarse mass partition of particulate matter and the smaller $PM_{2.5}$ partition. As a result, it is a good indicator of possible sources of coarse mass and fine soil impairment. One disadvantage of this approach is that it may over predict the impact of the sources by assuming all of the $PM_{2.5}$ is fine soil, which may not be the case for combustion sources.

[31] Arizona RH SIP Supplement Tables 8.3–8.6 provide a breakdown between anthropogenic and natural fire emissions. The State did not break out these subcategories of fire emissions in the 2008 inventory, but the ratio is likely comparable to 2002 and 2018. Also note that Arizona's Enhanced Smoke Management Program is described in detail in Section 12.7.5 of the RH SIP Supplement.

[32] Supplemental TSD, Appendix A.

[33] See *http://www.epa.gov/otaq/standards/allstandards.html* for a list of EPA vehicle emission and fuel standards.

[34] See *http://www.azdeq.gov/environ/air/plan/notmeet.html* for information on the State adoption of the PM_{10} plan for the Maricopa County and Apache Junction nonattainment area, including links to the plans.

[35] EPA finalized a rule on May 31, 2012, designating parts of Pinal County as nonattainment for the PM_{10} NAAQS (see 77 FR 32024). This designation requires the State to submit a plan to attain the standard. This plan must be submitted within 18 months of the designation. EPA has been providing technical assistance and guidance to the State on the development of this plan.

TABLE 4—RULES TO CONTROL FUGITIVE DUST AND ROAD DUST—Continued

Rule No.	Title	Adoption or amendment date	FR publication date	FR Citation
4–5–150	Applicability	06/03/2009	04/06/2010	75 FR 17307
4–5–160	Residential Parking Control Requirement	06/03/2009	04/06/2010	75 FR 17307
4–5–170	Deferred enforcement date	06/03/2009	04/06/2010	75 FR 17307
4–7–210	Definitions	06/03/2009	04/06/2010	75 FR 17307
4–7–214	General Provisions	06/03/2009	04/06/2010	75 FR 17307
4–7–218	Applicability; Development Activity	06/03/2009	04/06/2010	75 FR 17307
4–7–222	Owner and/or Operator Liability	06/03/2009	04/06/2010	75 FR 17307
4–7–226	Objective Standards; Sites	06/03/2009	04/06/2010	75 FR 17307
4–7–230	Obligatory Work Practices Standards; Sites	06/03/2009	04/06/2010	75 FR 17307
4–7–234	Nonattainment-Area Dust Permit Program; General Provisions	06/03/2009	04/06/2010	75 FR 17307
4–7–238	Nonattainment Area Site Permits	06/03/2009	04/06/2010	75 FR 17307
4–7–242	Nonattainment Area Block Permits	06/03/2009	04/06/2010	75 FR 17307
4–7–246	Recordkeeping and Records Retention	06/03/2009	04/06/2010	75 FR 17307
4–9–320	Test Methods for Stabilization For Unpaved Roads and Unpaved Parking Lots.	06/03/2009	04/06/2010	75 FR 17307
4–9–340	General Provisions	06/03/2009	04/06/2010	75 FR 17307

In conclusion, EPA proposes to concur with the State's decision to omit coarse mass and fine soil from its four-factor reasonable progress analysis for this planning period. In particular, there is a lack of a clear relationship between any particular source category of these pollutants and observed visibility impairment at the State's Class I areas. Therefore, EPA agrees with the State that it is more urgent to focus controls in this planning period on other pollutants. EPA will work with the State and appropriate multi-jurisdictional planning organization to better understand the causes of coarse mass and fine soil visibility impairment at Arizona's Class I areas. This additional analysis may indicate that it is necessary to control sources of these pollutants to ensure reasonable progress in future planning periods.

2. Visibility Trends in Arizona's Class I Areas

Arizona provided in its supplemental SIP an analysis of visibility trends at its Class I areas as measured by the IMPROVE monitoring network to indicate that the State is making reasonable progress.[36] EPA agrees with Arizona that, in general, visibility appears to be improving across the State. For the most part, however, this improvement does not appear to be significant, given the normal year-to-year variations that one would expect in monitored visibility levels.[37] In these year-to-year variations, it is difficult to distinguish whether significant trends are related to changes in source emissions or are from intermittent natural events. EPA agrees that nitrate-driven visibility impairment does appear to decrease moderately statewide, as one would expect when NO_X emissions decline. In particular, there appears to be a significant decrease in nitrate-driven visibility impairment at Saguaro West and Saguaro East,[38] the two Class I areas with the longest projected time lines to reach natural visibility background levels. This trend indicates these two areas may achieve greater improvement in visibility than the WRAP's analysis projected. While ADEQ's analysis of visibility trends provides helpful information in support of the State's overall RH planning efforts, this analysis cannot substitute for a complete four-factor analysis, as required by 40 CFR 51.308(d)(1)(i)(A) and 51.308(d)(1)(ii). Nonetheless, EPA encourages Arizona to continue to develop and refine this monitoring trends analysis as part of its 5-year progress report required under 40 CFR 51.308(g) and (h).

3. Point Sources of NO_X and Area Sources of NO_X and SO_2

In our original proposal published on December 21, 2012, we proposed to disapprove the State's determination that it was not appropriate to require additional controls on point sources of NO_X or area sources of NO_X and SO_2 in order to ensure reasonable progress. The supplemental information submitted on May 3, 2013, did not provide sufficient additional analysis for us to change our original position. In addition to the analysis of visibility trends based on monitoring data described in IV.B.2, ADEQ performed a four-factor analysis of NO_X emissions from the Phoenix Cement Company (PCC) plant located near Sycamore Canyon Wilderness Area. ADEQ did not perform a four-factor analysis for any other point sources or area source categories as part of its supplemental SIP.

a. Reasonable Progress Analysis of Phoenix Cement Company

The EPA finds that the four-factor analysis of PCC is inadequate to support ADEQ's determination that no additional controls are reasonable for this source. In particular, EPA finds that ADEQ's assessment of the cost of compliance and the potential visibility benefits of control are not supported by the underlying data. With regard to the cost of compliance, the supplement states: ''Based in part on estimates provided by the EPA and PCC, which are incorporated in PCC's March 6, 2013 comments, and applicable cost-estimate guidance, ADEQ finds that the cost of installing selective non-catalytic reduction (SNCR) control technology at PCC would be in excess of $1,700,000 and the cost of operating SNCR at PCC would be in excess of $1,200,000 annually.'' [39] The supplemental SIP contains no explanation or documentation of how ADEQ calculated these costs, but they appear to derive exclusively from PCC's own calculations contained in Attachment 4 (''Summary of SNCR Costs for PCC'') to PCC's March 6, 2013, comments to EPA.[40] In that analysis, PCC estimates

[36] More information on the State's analysis and our assessment of it is in the Supplemental TSD and in the EPA document ''EPA Summary and Assessment of ADEQ's Visibility Analysis'', May 9, 2013 (''EPA Assessment Document'').

[37] Supplemental TSD, Tables 12 and 14.

[38] Supplemental TSD, Table 14.

[39] Arizona RH SIP Supplement, pages 52–53.

[40] PCC's comments including its ''Summary of SNCR Costs for PCC'' are available in the docket for this action (EPA–R09–OAR–2012–0904).

that the total capital cost of SNCR would be $1,744,560 and the total annual cost (including both annualized capital costs and operating costs) would be $1,287,789. However, this analysis includes certain assumptions which are unsupported and inconsistent with EPA's Control Cost Manual. In particular, the analysis assumes an equipment lifetime of 10 years, whereas the Control Cost Manual provides for assumed economic lifetime of 20 years for an SNCR system.[41] Given that PCC estimates that the remaining useful life of Kiln 4 is roughly 50 years, the equipment lifetime used for calculating annualized costs should be at least 20 years. ADEQ's assumption of 10 years has the effect of significantly overstating the annualized cost of SNCR. Furthermore, neither PCC's analysis nor the supplemental SIP provides any calculation of cost effectiveness (*i.e.,* the cost per ton of emissions removed) of SNCR, which is the recommended metric of cost used for both BART and RP cost analyses.[42]

The supplemental SIP also states that, ''ADEQ has considered the visibility modeling issues incorporated in PCC's March 6, 2013 comments and concludes that changes to visibility impairment in the Sycamore Canyon Wilderness Area that might be achieved by the installation and operation of SNCR at PCC are not warranted in light of these costs and given the revised reasonable progress demonstration for the Sycamore Canyon Wilderness Area.'' [43] However, no quantitative assessment of the potential visibility benefits is provided. In addition, the supplemental SIP states that ''As demonstrated elsewhere in this SIP, reasonable progress will already be achieved for the Sycamore Canyon Wilderness Area,'' [44] although no specific reference is provided. This statement appears to refer to section 11.5 of the supplemental submittal (''Demonstration of Reasonable Progress Goals for 20% Worst Days''), in which ''ADEQ presents reasonable progress towards reaching the previously presented RPGs as interpreted through IMPROVE monitor data.'' [45] However, as previously noted, this analysis of visibility trends cannot substitute for a complete four-factor analysis.

Finally, under the ''Time Necessary for Compliance'' factor, ADEQ states that ''even if additional controls were identified, they would not need to be installed by 2018, because the 5-year requirement at CAA § 169A(g)(4), 42 U.S.C. § 7491(g)(4), applies only to sources subject to BART, which PCC is not, and because reasonable progress will already be achieved for the Sycamore Canyon Wilderness Area significantly in excess of the corresponding URP, as demonstrated elsewhere in this SIP.'' [46] We wish to clarify that, while ADEQ is correct that the five-year requirement for control installation does not apply to non-BART sources, this does not mean that the State may postpone indefinitely reasonable controls for non-BART sources. Rather, if such controls are necessary to ensure reasonable progress for the first planning period, installation is required by 2018, which is the final year in this planning period. If, by contrast, it is not practicable to install controls during the first planning period, one should take this into consideration as part of the four-factor analysis.[47] We also note that ADEQ's statement that ''reasonable progress will already be achieved for the Sycamore Canyon Wilderness Area significantly in excess of the corresponding URP, as demonstrated elsewhere in this SIP'' appears to be an inadvertent error, since ADEQ's responsiveness statement indicates that ADEQ has retracted this statement and that Sycamore Canyon does not, in fact, meet the glide path.[48] In summary, while we appreciate ADEQ's effort to conduct a four-factor analysis of NO_X at PCC in a short period of time, we find that this analysis is inadequate.

b. Other Elements of Arizona's Supplemental Reasonable Progress Analysis

With the exception of PCC, ADEQ did not perform a four-factor analysis for any other point source or area source category as part of its supplemental SIP. In particular, the SIP still contains no four-factor analysis for external combustion boilers, internal combustion engines or combustion turbines, despite the fact that these source categories are projected to comprise the vast majority of the State's NO_X emissions from point source in 2018.[49] The supplement does include an initial ''Q/D analysis'' (*i.e.,* a calculation of annual NO_X emissions (Q) in tons per year divided by distance to the closest Class I area (D) in kilometers) for major NO_X sources in the State, as well as an analysis of ammonium nitrate trends at the relevant Class I areas.[50] However, given that the State has elected to focus on NO_X emissions from point and area sources for this planning period, we find it is not reasonable for the State to exclude the majority of these emissions from a four-factor analysis based solely on monitoring trends.

c. Conclusions Regarding Point Sources of NO_X and Area Sources of NO_X and SO_2

Based on the foregoing assessment, we therefore are proposing to disapprove ADEQ's determination that no additional controls for point sources of NO_X and area sources of NO_X and SO_2 are reasonable. It should be noted that EPA is not proposing to find that such additional controls are in fact reasonable. Rather, we find that further analysis is needed to determine whether such controls are reasonable. If we finalize our proposed disapproval of ADEQ's determination in this regard, we would perform this analysis as part of our development of a proposed partial Regional Haze FIP for Arizona.

C. BART Analyses and Determinations

We proposed on December 21, 2012, to approve in part and disapprove in part certain elements of the BART analyses in Arizona's RH SIP submitted on February 28, 2011.[51] In Arizona's supplemental SIP dated May 3, 2013, ADEQ revised aspects of its BART analyses and determinations for four facilities: Miami Smelter, Hayden Smelter, Catalyst Paper and Apache Generating Station.[52] Based on our assessment of updated information, we now propose to approve a revised set of BART-eligible units for the Miami and Hayden smelters. However, regarding the Miami smelter, we are proposing to disapprove ADEQ's new determination that this source is exempt from a BART analysis for NO_X controls. Regarding the Hayden smelter, we are proposing to

[41] EPA Air Pollution Control Cost Manual, Sixth Edition, EPA/452/B–02–001, January 2002, Section 4.2, Chapter 1, pages 1–37.

[42] See *e.g.,* BART Guidelines, 40 CFR part 51, appendix Y, section IV.D.4.b; See, *e.g.* BART Guidelines, 40 CFR part 51, appendix Y, section IV.D.4.b; Guidance for Setting Reasonable Progress Goals under the Regional Haze Program, July 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (''Reasonable Progress Guidance'') section 5.1.

[43] Arizona RH SIP Supplement, page 53.

[44] *Id.*

[45] *Id.* at page 89.

[46] *Id.* at page 53.

[47] See EPA's Reasonable Progress Guidance section 5.2.

[48] Arizona RH SIP Supplement, Enclosure 3, Appendix E, Responsiveness Summary at page 3.

[49] See *e.g.,* Table 11.2 of the Arizona RH SIP Supplement.

[50] See Arizona RH SIP Supplement Section 11.5.2 (Ammonium Nitrate Q/D Analysis).

[51] The BART sources in today's action are in addition to Apache, Cholla and Coronado that were the focus of our final rule published on December 5, 2012.

[52] See Arizona RH SIP Supplement Chapter 10, sections 10.4, 10.7 and 10.8; Appendix D, Sections VI (C), VII, IX, XII (B&C), XIII (B, C & D).

disapprove ADEQ's new determination that this source is exempt from a BART analysis for PM_{10}. Despite its determination that the Hayden smelter is exempt from a BART analysis for PM_{10}, ADEQ in fact conducted such an analysis, and we are proposing to approve ADEQ's determination that BART for PM_{10} is no additional controls. We also propose to approve the State's finding that a BART analysis is not required for Catalyst Paper. Finally, we propose to approve a clarification in the application of the State's BART determination for Apache Unit 1. We have limited the scope of our review to the facilities or elements of a facility's BART analysis that were revised in the supplemental SIP. Please refer to our proposed rule of December 21, 2012, for further details on our proposed partial approvals and partial disapprovals.

1. FMMI Miami Smelter

a. Identification of BART-Eligible Units

ADEQ's Submittal: In its supplemental SIP, ADEQ clarified that the units at the Miami Smelter constituting the BART-eligible source do not include the Remelt/Mold Pouring Vessel. Previously, ADEQ and FMMI had identified the Remelt Vessel as BART-eligible.[53] Although the precise construction date of the Remelt Vessel could not be determined, ADEQ referenced certain facility diagrams provided by FMMI indicating that the Remelt Vessel was in operation before 1962,[54] which is prior to the BART time period for eligibility from 1962 to 1977.

EPA's Assessment: Based on the information contained in the supplemental SIP, we propose to approve ADEQ's finding that the Remelt Vessel unit is not BART-eligible. As a result, the BART-eligible source at the Miami Smelter now consists of the electric furnace, converter numbers 2–5, and the acid plant.[55] Today's proposal supersedes our previous proposal of December 21, 2012, that identified a different set of emission units as constituting the BART-eligible source.[56]

b. Exemption of NO_X Emissions

ADEQ's Submittal: ADEQ states in its supplemental SIP that ''[b]ased on an emission analysis for FMMI, it has been concluded that the potential emissions from the BART-subject units is less than 40 tpy thus rendering the outcome that those units should not be subject to a BART analysis for NO_X.'' [57] FMMI's analysis consists of identifying the maximum annual natural gas usage for each BART-eligible unit during the period of 2007 to 2011, which corresponds to a total emission rate of 31.6 tpy.[58] Further, ADEQ notes that ''in 2010 the converter process gas cooling system was changed from an air-to-gas tubing to water spray cooling. This conversion reduced the number of burn outs and holding fires due to plugging. The net effect is that natural gas usage is significantly lower after the change. ADEQ considers this change to be an inherent physical limitation and therefore a limitation on the potential emissions from these convertors.'' [59] As a result of this analysis, ADEQ asserts that the BART-eligible units at FMMI have a potential to emit (PTE) of 31.6 tpy, which is less than the 40 tpy de minimis threshold for NO_X emissions.

EPA's Assessment: EPA disagrees with FMMI's and ADEQ's analysis. The RHR defines PTE as ''the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.'' [60] This definition essentially is identical to those used by other programs under the Clean Air Act such as New Source Review under Title I and Operating Permits under Title V.

According to a 1995 memorandum from John Seitz of OAQPS to EPA Air Directors, there are sources for which inherent physical limitations restrict operations and, as a result, PTE.[61] For the most part, these are simple sources that have a single emission unit responsible for most of the emissions (*e.g.,* grain elevators and spray booths at auto body shops). For larger source types with multiple emission units and complex operations, these limitations can be difficult or problematic to identify. In these cases, EPA strongly recommends that sources obtain legally and practically enforceable limitations on PTE.

Determining PTE from batch processes can be especially problematic and difficult because emissions and operation profiles are not uniform. In 1996, John Seitz issued a memorandum to the EPA Air Directors providing guidance on determining the maximum capacity of batch chemical production operations which may be useful for determining the maximum capacity of other kinds of batch processes.[62] Three steps are identified in this memorandum. These are identifying potential batch operations, determining the emissions associated with each cycle, and determining worst-case emissions based on the highest emitting combination of production cycles.

FMMI did not identify any inherent physical or operational limitations to determine the PTE of NO_X from the BART-eligible units, and did not identify legally and practically enforceable limitations on the operations or emissions from these units. Historical records of actual emissions, fuel usage, or material throughput are not inherent physical limitations and do not demonstrate the maximum capacity of a source. Because an unestablished capacity reduced by an undefined ''significant'' amount remains unknown, we find that FMMI's and ADEQ's analysis is insufficient to establish that the BART-eligible units have a PTE of less than 40 tpy of NO_X emissions. Therefore, we proposed to disapprove ADEQ's determination that these units do not require a BART analysis for NO_X.

2. ASARCO Hayden Smelter

a. Identification of BART-Eligible Units

ADEQ's Submittal: Arizona's original RH SIP submitted on February 28, 2011, identified anode furnaces 1 and 2 and converters 1, 2 and 4 at ASARCO's Hayden Smelter as subject to BART for one or more pollutants. This determination was based on information provided by ASARCO stating that these units were in existence on August 7, 1977, and began operation after August 7, 1962. In the supplemental SIP dated May 3, 2013, ADEQ found that units 1, 3, 4 and 5 of the five converters are BART-eligible.[63] ADEQ noted that

[53] Arizona RH SIP Supplement, Section 10.7, page 39, and Appendix D, section IV.E, page 27.

[54] The FMMI documents and diagrams are contained in FMMI's comment letter, which is available in the docket for this action (EPA–R09–OAR–2012–0904).

[55] As described on page 5 of FMMI's March 6, 2013 comment letter, and page 153 of the February 28, 2011, Arizona Regional Haze SIP.

[56] Table 11, 77 FR 75721.

[57] Arizona RH SIP Supplement, page 53.

[58] Emission calculations included as an attachment to the Arizona RH SIP Supplement.

[59] See ADEQ Responsiveness Summary, page 6.

[60] 40 CFR 51.301.

[61] ''Options for Limiting the Potential to Emit of a Stationary Source Under Section 112 and Title V of the Clean Air Act,'' January 25, 1995.

[62] ''Clarification of Methodology for Calculating Potential to Emit of Batch Chemical Production Operations,'' August 29, 1996.

[63] Arizona RH SIP Supplement, Section 10.7, page 39, and Appendix D, section IV.E, page 27.

revised information provided by ASARCO showed that converter 1 was installed in 1966, converter 2 was installed in 1949 or 1950, and converters 3, 4 and 5 were replaced between 1965 and 1975. Based on these installation and replacement dates, all the converters except unit 2 are BART-eligible. ADEQ also confirmed that anode furnaces 1 and 2 are BART-eligible and anode furnace 0, constructed in 2001, is not.

EPA's Assessment: EPA proposes to approve ADEQ's finding that converters 1, 3, 4 and 5 and anode furnaces 1 and 2 constitute the BART-eligible source at the Hayden Smelter. This designation supersedes the proposed approval of the BART-eligible source at the Hayden Smelter contained in our proposal of December 21, 2012, in which we identified a different set of converters and anode furnaces as constituting the BART-eligible source.

b. Exemption of PM_{10} Emissions

ADEQ's Submittal: In its supplemental SIP, ADEQ references comments submitted on EPA's proposed rulemaking that states ''stationary source'' is defined under the RHR as ''any building, structure, facility, or installation which emits or may emit any air pollutant.'' [64] In contrast to the new source review rules, the regional haze rule incorporates a dual definition of stationary source. In other words, it contains one definition for ''building, structure or facility'' and another for ''installation.'' While ''building, structure or facility'' is defined as all of the pollutant-emitting activities that belong to the same industrial grouping, the term ''installation'' is defined as ''an identifiable piece of process equipment.'' ADEQ asserts that since the Hayden and Miami smelter plants were in operation long before 1962, they cannot be BART-eligible under the ''building, structure or facility'' prong of the definition and instead, the ''installation'' prong applies. Noting that each anode furnace, copper converter and shaft furnace is an ''identifiable piece of process equipment,'' ADEQ asserts that each constitutes a separate ''BART-eligible source'' and that each therefore has to be evaluated individually against the de minimis emissions threshold for BART of 15 tpy of PM_{10}. Since the average PTE for the process equipment is below 15 tpy, ADEQ believes the BART-eligible sources must be exempt from a BART analysis for PM_{10}.

EPA's Assessment: As noted by ADEQ, the terms ''BART-eligible source'' and ''stationary source'' are defined in the RHR in a manner that can extend to include multiple emission units or pieces of process equipment, or to include only a single emission unit or single piece of process equipment.[65] However, ADEQ appears to misunderstand how this dual definition applies in the context of identifying BART-eligible sources. The BART Guidelines and the preamble to the RHR discuss at length the meaning of ''stationary source'' and how to identify the composition of the ''BART-eligible source'' within the fence line of particular facility.[66] Although the preamble and the Guidelines are not binding with respect to copper smelters, they provide important guidance on how to apply the requirements of the RHR, including the generally applicable definition of ''stationary source.'' [67] In particular, the Guidelines explain that ''For emission units within the 'contiguous or adjacent' boundary and under common control, you must group emission units that are within the same industrial grouping (that is, associated with the same 2-digit SIC code) in order to define the stationary source.'' [68] Thus, the Guidelines suggest that the only circumstance under which there could be more than one ''stationary source'' at a single facility is if the facility includes BART-eligible units categorized under different 2-digit SIC codes. This circumstance does not appear to apply to either ASARCO Hayden or FMMI Miami. Therefore, we do not agree with ADEQ's assertion that each unit at the smelters constitutes a separate source. We also note that, if each unit were in fact a separate source, a separate five-factor analysis for each unit would be required. ADEQ has not performed separate analyses for each subject-to-BART unit. Moreover, we note that the preamble to the RHR specifically explains that:

> The *de minimis* levels [set forth in 51.308(e)(1)(ii)(C)] discussed today apply on a plant-wide basis. Applying de minimis levels on a unit by unit basis as suggested by certain commenters could exempt hundreds of tons of emissions of a visibility impairing pollutant from BART analysis.[69]

This language indicates that aggregation from the unit-level to a broader ''plant-wide basis'' is required when determining if de minimis levels apply. Therefore, a subject-to-BART source can only be exempted from a BART analysis for PM_{10} where the total PM_{10} emissions from all BART-eligible units at the plant are less than 15 tpy. As a result, we are proposing to disapprove ADEQ's finding that the ASARCO Hayden Smelter is exempt from a BART analysis for PM_{10}.

c. BART Determination for PM_{10}

ADEQ's Submittal: In its supplemental SIP, ADEQ provided a BART analysis of PM_{10} that is based on updated emission calculations and new CALPUFF visibility modeling. Elements of this analysis are based upon an updated BART analysis submitted by ASARCO to ADEQ on March 20, 2013.[70] For the converters, the revised baseline emission estimates of PM_{10} are based primarily on the results of the stack tests performed during the 2001 to 2003 baseline period, as summarized in Table 5.[71] For anode furnace emissions, which are fugitive in nature, baseline emission estimates of PM_{10} are based on a historical fugitive emission study.[72]

[64] Arizona RH SIP Supplement, Appendix D, page 24. ADEQ's March 6, 2013, comment letter is available in the docket for this action (EPA–R09–OAR–2012–0904).

[65] When the dual definition was originally promulgated, EPA explained that this it was intended ''to accommodate the reconstruction provisions of BART applicability, and to be consistent with the nonattainment [new source review] regulations (45 FR 52676, August 7, 1980)''. Although this dual definition was later removed from the NSR regulations, 46 FR 50766, 50771, 40 CFR 51.165(a)(1)(ii) it was retained for purposes of the RAVI (and later, the Regional Haze) regulations, presumably in order to continue ''to accommodate the reconstruction provisions of BART applicability,'' that is, to ensure that, when a single unit at source was reconstructed during the BART window, it would become BART eligible, even if the rest of the facility remained ineligible.

[66] See 40 CFR part 51, appendix Y, section II.A.3; 70 FR 39104, 39115–17.

[67] See *e.g.,* 70 FR 39104, 39108 (July 6, 2005) (''In response to State concerns about equitable application of the BART requirement to source owners with similar sources in different States, we do encourage States to follow the guidelines for all source categories but are not requiring States to do so. States should view the guidelines as helpful guidance for these other categories.'').

[68] See 40 CFR part 51, appendix Y, section II.A.3 (''How do I identify whether a plant has more than one ''stationary source?'').

[69] 70 FR 39117.

[70] See ''Asarco Hayden BART submittal 2013–03–20.pdf'' included as an attachment to the Arizona RH SIP Supplement (May 3, 2013).

[71] Relevant excerpts from the November 4, 2002, performance tests are included as attachments to the Arizona RH SIP Supplement (May 3, 2013). Emissions calculations based on this test are also included on page 6 in Asarco's March 6, 2013 comment letter to EPA, which is available in the docket for this action (EPA–R09–OAR–2012–0904).

[72] Relevant excerpts from the fugitive emission study ''Final Report, Fugitive SO_2 Emission Study, Asarco Ray Complex, Hayden, Arizona'' prepared by TRC North American Weather Consultants, conducted from October 1994 through May 1995, are included as attachments to the Arizona RH SIP Supplement (May 3, 2013).

TABLE 5—ASARCO HAYDEN BASELINE PM_{10} EMISSIONS

Unit	Exhaust stack	Acid plant exhaust emissions		Converter fraction	PM_{10} Emissions	
		(lb/hr)	(g/s)	%	(lb/hr)	(g/s)
Converters 1, 3, 4, 5	Primary hooding [1]	9.34	1.18	0.20	1.91	0.24
	Secondary hooding				8.02	1.01
	Fugitives				7.23	0.91
Anode Furnaces 1, 2 [2]	Fugitives				18.33	2.31

[1] Based on test results from the acid plant exhaust, which receives exhaust from the converter primary hooding as well from the flash furnace. In order to apportion the performance test results between the converters and the flash furnace, an 80/20 ratio developed from AP–42 emission factors was used. See AP–42 (10/86), Table 12.3–3.

[2] Based on historical fugitive emissions study. PM_{10} emissions from the study were scaled upwards based on the concentrate use at the time of the study and the highest month of concentrate use from 2001–03.

ADEQ identified the following existing particulate control devices for each of the BART-eligible units/exhaust stacks listed in Table 5:

- Converter primary hooding: routed to a combination of cyclones, wet scrubbers, wet gas cleaning, and acid plant;
- Converter secondary hooding: baghouse;
- Converter fugitives: no controls; and
- Anode furnaces: no controls (during 2001–2003 baseline period).

In addition, the following control options were considered for each of the BART-eligible units/exhaust stacks:

- Converter primary hooding: no further controls considered; the current configuration represents the most stringent set of particulate controls;
- Converter secondary hooding: no further controls considered; a baghouse is considered the most stringent particulate control;
- Converter fugitives: baghouse, wet scrubber; and
- Anode furnaces: baghouse, wet scrubber.

ASARCO also performed updated CALPUFF visibility modeling using the revised PM_{10} emission rates summarized in Table 5.[73] In order to be consistent with the previous subject-to-BART modeling performed by the WRAP, the updated CALPUFF modeling was performed using the same procedures and approach outlined in the WRAP RMC's CALPUFF BART Modeling Protocol dated August 15, 2006. The results of this updated visibility modeling are summarized in Table 6.

TABLE 6—ASARCO HAYDEN VISIBILITY IMPACT OF PM_{10}

Class I area		State	Min distance from facility (km)	98th Percentile impact (deciview)		
Abbr	Name			2001	2002	2003
chir	Chiricahua NM	AZ	169	0.01	0.01	0.01
gali	Galiuro Wilderness	AZ	47	0.04	0.03	0.04
gila	Gila Wilderness	NM	186	0.00	0.00	0.00
maza	Mazatzal Wilderness	AZ	121	0.01	0.01	0.01
moba	Mount Baldy Wilderness	AZ	151	0.00	0.00	0.00
pefo	Petrified Forest NP	AZ	215	0.00	0.00	0.00
pimo	Pine Mountain Wilderness	AZ	167	0.00	0.00	0.00
sagu	Saguaro NP	AZ	86	0.01	0.01	0.01
sian	Sierra Ancha Wilderness	AZ	84	0.01	0.01	0.01
supe	Superstition Wilderness	AZ	49	0.04	0.03	0.03
syca	Sycamore Canyon Wilderness	AZ	239	0.00	0.00	0.00

For the converter primary and secondary hooding, ADEQ indicated that the existing controls represent the most stringent level of control, and that no further particulate controls are required as BART. For the converter fugitives and anode furnace emissions (which are fugitive in nature) ADEQ determined that no additional particulate controls are required as BART. ADEQ's determination is based primarily on cost of controls and anticipated visibility improvement. Citing a maximum visibility improvement at a single Class I area of 0.04 dv, ADEQ stated that the benefits of control are outweighed by the costs of control and, in the case of wet scrubbers, the adverse environmental effects of water consumption and sludge management.

EPA's Assessment: We now propose to approve ADEQ's determination that BART for PM_{10} at the Hayden smelter is no additional controls, based upon the small amount of anticipated visibility improvement from additional particulate controls. The approval of this BART determination should not be construed to represent an acceptance of the entirety of the analysis supporting the determination. For example, the supporting calculations for control costs were not included, which did not allow us to perform a detailed review. In addition, we note that the CALPUFF modeling to support the BART determination was not performed using the current regulatory-approved version of CALPUFF.

As a result, EPA performed CALPUFF modeling to check ADEQ's PM_{10} conclusion. EPA used the regulatory version of the model, a version of the WRAP-developed meteorological inputs that incorporates upper air data, and the revised IMPROVE equation. As shown in Table 7, which includes all Class I

[73] The results of this visibility modeling are contained in an attachment to ASARCO's March 6, 2013, comment letter, which was as attachment to the revised Arizona Regional Haze SIP.

areas within 300 kilometers of the Hayden Smelter, the 98th percentile deciview results confirm ADEQ's conclusion that PM_{10} visibility impacts are so small that additional controls are not warranted for BART.

TABLE 7—EPA MODELING OF ASARCO HAYDEN PM_{10} VISIBILITY IMPACT [74]

Class I area	98th Percentile impact (deciview)		
	2001	2002	2003
Chiricahua National Monument	0.02	0.02	0.02
Chiricahua Wilderness	0.02	0.02	0.02
Galiuro Wilderness	0.13	0.11	0.12
Gila Wilderness	0.01	0.01	0.01
Mazatzal Wilderness	0.02	0.01	0.02
Mount Baldy Wilderness	0.01	0.01	0.01
Petrified Forest National Park	0.01	0.01	0.01
Pine Mountain Wilderness	0.01	0.01	0.01
Saguaro National Park	0.04	0.03	0.04
San Pedro Parks Wilderness	0.00	0.00	0.00
Sierra Ancha Wilderness	0.02	0.02	0.02
Superstition Wilderness	0.09	0.07	0.08
Sycamore Canyon Wilderness	0.01	0.01	0.01

3. Catalyst Paper (Snowflake Mill)

ADEQ's Submittal: Previously, the Arizona RH SIP included BART determinations for NO_X and SO_2 at Catalyst Paper (Snowflake Mill). In the May 3, 2013 Supplement, ADEQ revised sections 10.4 (''Subject-to-BART Determination'') and 10.8 (''Arizona Sources that Required a BART Analysis''), as well as various sections of Appendix D, to state this facility is permanently closed and that a BART analysis is not being conducted for the facility. As part of its comments on our December 2, 2012 proposal, ADEQ submitted two letters regarding closure of the Snowflake Mill: A letter from the site manager seeking termination of the facility's operating permit and a letter from the ADEQ Air Division Director terminating the permit.[75]

EPA's Assessment: Pursuant to long-standing EPA policy, ''reactivation of a permanently shutdown facility will be treated as operation of a new source for purposes of PSD review.'' [76] Consistent with this policy, ADEQ's supplemental RH SIP revision affirms that reactivation of the Snowflake Mill will be subject to new source review.[77] Given that the mill's operating permit has been terminated, that both the mill's manager and ADEQ view the plant's closure as permanent and that ADEQ has stated that reactivation of the plant would trigger new source review, we agree that no BART analysis is necessary for this source. Therefore, we propose to approve ADEQ's decision not to include such an analysis in the SIP.

4. Arizona Electric Power Cooperative—Apache Generating Station

ADEQ's Submittal: The original SIP submittal dated February 28, 2011, included a BART limit for NO_X emissions from Apache Unit 1 of 0.056 lb/MMBtu, which we approved in a final rule on December 5, 2012. Apache Unit 1 consists of a simple cycle turbine (GT1) and a boiler (steam turbine or ST1), each with a separate stack, that have the ability to operate separately or together in a combined cycle mode. In the supplemental SIP, ADEQ clarified that the NO_X BART limit for Apache Unit 1 will apply when ST1 operates alone or when ST1 and GT1 operate together in combined cycle mode. The BART limit does not apply to (a) GT1 during stand-alone simple cycle operation or (b) ST1 and GT1 when ST1 burners are shut off and ST1 is not producing electricity.[78]

EPA's Assessment: Gas turbines are not among the 26 industrial source categories for BART included in the definition of ''existing stationary facility'' in the Regional Haze Rule, whereas combined cycle turbines are included.[79] The supplemental SIP clarifies that emissions from GT1 are not subject to the BART emission limit during instances in which GT1 operates alone, as a simple cycle turbine. We propose to incorporate this clarification into the applicable SIP.

V. EPA's Proposed Action

EPA is proposing to approve in part and disapprove in part Arizona's revised RH SIP submitted on May 3, 2013, which supplements its submittal of February 28, 2011, by addressing some of the elements of EPA's proposed rule published on December 21, 2012. In today's action, we propose to approve Arizona's emissions inventory for 2008, the reasonable progress analysis for coarse mass and fine soils, and certain aspects of the analyses and determinations of BART controls for Miami Smelter, Hayden Smelter, Catalyst Paper and Apache Generating Station. In particular, we are proposing to approve the determination that BART for PM_{10} at the Hayden Smelter is no additional controls. We also propose to disapprove some elements of the new submittal, and propose some minor corrections and clarifications. We acknowledge the progress ADEQ has made in its BART analysis and reasonable progress analysis, two of the RHR's major requirements. We look forward to working with ADEQ in the future on its regional haze program. We will address both our proposal of December 21, 2012, and today's

[74] Spreadsheet (Hayden_Visibility_Impacts.xlsx) of full modeling results is available in the docket (EPA–R09–OAR–2012–0904).

[75] Letter from John Groothuizen, Site Manager at the Catalyst Paper Snowflake to Eric Massey, Director Air Quality Division, ADEQ, Re: Catalyst Paper (Snowflake) Inc Facility Closure, Title V Permit No. 46898 Termination (December 21, 2012); Letter from Eric Massey, Director Air Quality Division, ADEQ to John Groothuizen, Site Manager at the Catalyst Paper Snowflake, Re: Termination of Air Quality Control Permit No. 46898, Snowflake Paper Mill (Jan. 24, 2013).

[76] In re Monroe Electric Generating (Petition No. 6–99–2), EPA Order Partially Granting and Partially Denying Petition for Objection to Permit at 8 (June 11, 1999).

[77] Arizona RH SIP Supplement, Appendix D, page 41.

[78] Arizona RH SIP Supplement, Appendix D, page 49.

[79] See 40 CFR 51.301; 40 CFR part 51 appendix Y, section II.A.1. (''combined cycle turbines are . . . considered 'steam electric plants' because such facilities incorporate heat recovery steam generators. Simple cycle turbines, in contrast, are not 'steam electric plants' because these turbines typically do not generate steam.'').

proposed action in our final rule due in July 2013.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* because this proposed partial approval and partial disapproval of SIP revisions under CAA section 110 will not in-and-of itself create any new information collection burdens but simply proposes to approve certain State requirements, and to disapprove certain other State requirements, for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This proposed rule does not impose any requirements or create impacts on small entities. This proposed partial SIP approval and partial SIP disapproval under CAA section 110 will not in-and-of itself create any new requirements but simply proposes to approve certain State requirements, and to disapprove certain other State requirements, for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. Therefore, this action will not have a significant economic impact on a substantial number of small entities. We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector.'' This action proposes to approve certain preexisting requirements, and to disapprove certain other pre-existing requirements, under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this proposed action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to approve certain State requirements, and to disapprove certain other State requirements, for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement. ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that ''have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This action does not have tribal implications. It will not have substantial direct effects on any Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175, because it merely proposes to approve certain State requirements, and to disapprove certain other State requirements, for inclusion into the SIP. EPA also notes that this action will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

Nonetheless, we note that PCC is owned by the tribal government of the Salt River Pima-Maricopa Indian Community (SRPMIC). Our proposed disapproval of ADEQ's determination not to require additional controls on this source leaves open the possibility that this source could be regulated in a future regional haze FIP. Therefore, consistent with the *EPA Policy on Consultation and Coordination with Indian Tribes* (May 2, 2011), we have shared our initial analyses with SRPMIC and PCC to ensure that the tribe has an early opportunity to provide feedback on such a potential FIP. In addition EPA Region 9 has offered opportunities for meetings and formal consultation.[80]

[80] Memo dated May 8, 2013, from Colleen McKaughan regarding EPA Region 9 communications with SRPMIC.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed partial approval and partial disapproval under section 110 of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

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

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

Dated: May 9, 2013.

Jared Blumenfeld,

Regional Administrator, Region 9.

[FR Doc. 2013–11976 Filed 5–17–13; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0692; FRL–9814–1]

Approval and Promulgation of Implementation Plans; Florida; Infrastructure Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve in part, and disapprove in part, the State Implementation Plan (SIP) submission, submitted by the State of Florida, through the Florida Department of Environmental Protection (FDEP) on October 31, 2011, to demonstrate that the State meets the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2008 8-hour ozone national ambient air quality standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA, which is commonly referred to as an ''infrastructure'' SIP. FDEP certified that the Florida SIP contains provisions that ensure the 2008 8-hour ozone NAAQS are implemented, enforced, and maintained in Florida (hereafter referred to as ''infrastructure submission''). EPA is now taking two related actions on FDEP's infrastructure submission for Florida. First, EPA is proposing to disapprove in part portions of Florida's infrastructure submission as it relates to the regulation of greenhouse gas (GHG) emissions. Second, EPA is proposing to determine that Florida's infrastructure submission, addresses all other required infrastructure elements for the 2008 8-hour ozone NAAQS, with the exception of the aforementioned portions and the requirement that the SIP include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures to protect visibility in another state.

DATES: Written comments must be received on or before June 19, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0692, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2012–0692,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2012–0692. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly

to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9140. Ms. Ward can be reached via electronic mail at *ward.nacosta@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. Background and Overview

On March 27, 2008, EPA promulgated a revised NAAQS for ozone based on 8-hour average concentrations. EPA revised the level of the 8-hour ozone NAAQS to 0.075 parts per million. *See* 77 FR 16436. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2008 8-hour ozone NAAQS to EPA no later than March 2011.

Florida's infrastructure submission was received by EPA on October 31, 2011, for the 2008 8-hour ozone NAAQS. FDEP's October 31, 2011, infrastructure SIP submission for the 2008 8-hour ozone NAAQS also addressed CAA section 110(a)(2)(D)(i)(I), which requires that SIPs contain adequate provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment maintenance of the NAAQS in another state. On April 30, 2013, following the recent *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012) decision, Florida withdrew its submission for section 110(a)(2)(D)(i)(I). This decision addressed the requirements of 110(a)(2)(D)(i)(I), and provided that a section 110(a)(2)(D)(i)(I) SIP submission cannot be considered a ''required'' SIP submission until EPA has defined a state's obligations pursuant to that section. *See EME Homer City,* 696 F.3d at 32 (''A SIP logically cannot be deemed to lack a 'required submission' or deemed to be deficient for failure to meet the good neighbor obligation before EPA quantifies the good neighbor obligation.'') EPA historically has interpreted section 110(a)(1) of the CAA as establishing the required submittal date for SIPs addressing all of the ''interstate transport'' requirements in section 110(a)(2)(D), including the provisions in section 110(a)(2)(D)(i)(I) regarding significant contribution to nonattainment and interference with maintenance. However, at this time in light of the *EME Homer City* opinion, EPA is not treating the section 110(a)(2)(D)(i)(I) SIP submission from FDEP as a required SIP submission. The *EME Homer City* opinion provides that EPA does not have authority to promulgate Federal Implementation Plan (FIP) to address the requirements of section 110(a)(a)(2)(D)(i)(I) until EPA has identified emissions in a state that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state and given the state an opportunity to submit a SIP to address those emissions. *EME Homer City,* 696 F.3d at 28.

Additionally, Florida did not submit a SIP revision to adopt the appropriate emission thresholds for determining which new stationary sources and modification projects become subject to PSD permitting requirements for their GHG emissions as promulgated in the GHG Tailoring Rule. *See* 75 FR 31514, June 3, 2010. Therefore, Florida's federally-approved SIP does not address or provide adequate legal authority for, the implementation of a GHG PSD program in Florida. Approval of a revision to address GHG is required to meet sections 110(a)(2)(C), D(i)(II), and (J) related to PSD. On December 30, 2010, EPA promulgated a FIP [1] under CAA section 110(c)(1)(A) for Florida to govern PSD permitting for GHG in the State. Since the Florida SIP currently does not provide adequate legal authority to address the new GHG PSD permitting requirements at or above the emissions levels set in the GHG Tailoring Rule, or at other appropriate levels, it does not satisfy portions of the aforementioned infrastructure requirements. *See* 75 FR 82246. As a result, EPA is proposing disapproval in part portions of sections 110(a)(2)(C), D(i)(II) and (J) of Florida infrastructure SIP submission as related to GHG PSD permitting requirements. EPA's proposed disapproval of these elements does not result in any further obligation on the part of Florida, because, as described above, EPA has already promulgated a FIP for the Florida PSD program to address permitting GHGs at or above the GHG Tailoring Rule thresholds. Thus, today's proposed action to disapprove FDEP's submission for the PSD-related portions of sections 110(a)(2)(C), D(i)(II), and (J), once final, will not require any further action by either FDEP or EPA.

[1] Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan—Final Rule, 75 FR 82246 (December 30, 2010).

Today's action is proposing two related actions on Florida's October 31, 2011, submission. First, EPA is proposing to approve Florida's infrastructure submission [2] for the applicable requirements of the 2008 8-hour ozone NAAQS, with the exception of the visibility requirements of section 110(a)(2)(D)(i)(II), and the portions of sections 110(a)(2)(C), D(i)(II), and (J) related to GHG PSD permitting. With respect to Florida's infrastructure SIP submission related to the visibility requirements of section 110(a)(2)(D)(i)(II), EPA will act on this portion of the submission in a separate action. With respect to the portions of sections 110(a)(2)(C), D(i)(II), and (J) related to GHG PSD permitting requirements, EPA is proposing to disapprove Florida's submission related to these requirements. This action is not approving any specific rule, but rather proposing that Florida's already approved SIP meets certain CAA requirements.

II. What elements are required under sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 2008 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with the 1997 8-hour ozone NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are summarized below.[3]

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.[4]
- 110(a)(2)(D): Interstate transport.[5]
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.[6]
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

III. Scope of Infrastructure SIPs

EPA notes that this rulemaking does not address four substantive issues that are not integral to the Florida infrastructure SIP submission. These four issues are: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources (SSM), that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (director's discretion); (iii) existing provisions for minor source new source review (NSR) programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (minor source NSR); and, (iv) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (NSR Reform).

Instead, EPA has indicated that it has other authority to address any such existing SIP defects in other rulemakings, as appropriate. A detailed rationale for why these four substantive issues are not part of the scope of infrastructure SIP rulemakings can be found in EPA's November 8, 2012, proposed rule entitled, ''Approval and Promulgation of Implementation Plans; Florida; 110(a)(1) and (2) Infrastructure Requirements for the 1997 annual and 2006 24-hour Fine Particulate Matter National Ambient Air Quality Standards'' in the section entitled, ''Scope of Infrastructure SIPs.'' *See* 77 FR 66927.

IV. What is EPA's analysis of how Florida addressed the elements of Sections 110(a)(1) and (2) ''Infrastructure'' provisions?

EPA is proposing to take two actions in response to Florida's infrastructure SIP submission for the 2008 8-hour ozone NAAQS. FDEP's infrastructure submission addresses the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A): *Emission limits and other control measures:* There are several regulations within Florida's SIP relevant to air quality control regulations which include enforceable emission limitations and other control measures. Chapters 62–204, *Air Pollution Control Provisions;* 62–210, *Stationary Sources—General Requirements; and* 62–296, *Stationary Sources—Emissions Standards,* establish emission limits for ozone and address the required control measures,

[2] As noted above, Florida withdrew the portions of its infrastructure SIP submission related to the requirements of section 110(a)(2)(D)(i)(I). As such, this proposed action does not address these requirements.

[3] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[4] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[5] In accordance with the panel of the U.S. Court of Appeals for the D.C. Circuit opinion, EPA at this time is not treating section 110(a)(2)(D)(i)(I) as a required SIP submission. *See EME Homer City generation, L.P.* v. *EPA,* 696 F.3d 7. Unless the *EME Homer City* decision is reversed or otherwise modified by the Supreme Court, states are not required to submit 110(a)(2)(D)(i)(I) SIPs until the EPA has quantified their obligations under that section. The portions of the SIP submission relating to 110(a)(2)(D)(i)(II) (also referred to as prongs 3 and 4) and 110(a)(2)(D)(ii), in contrast, are required. Prong 3 of 110(a)(2)(D)(i) and 110(a)(2)(D)(ii) are being acted upon by EPA in today's proposed rulemaking. Prong 4 of 110(a)(2)(D)(i) will be acted on in a separate action.

[6] As mentioned above, this element is not relevant to today's proposed rulemaking.

means and techniques for compliance with the ozone NAAQS respectively. EPA has made the preliminary determination that the provisions contained in these chapters and Florida's practices are adequate to protect the 2008 8-hour ozone NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing State provisions with regard to excess emissions during SSM of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (September 20, 1999), and the Agency plans to address such state regulations in a separate action.[7] In the meantime, EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

Additionally, in this action, EPA is not proposing to approve or disapprove any existing State rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B) *Ambient air quality monitoring/data system:* Chapters 62–204, *Air Pollution Control Provisions;* 62–210, *Stationary Sources—General Requirements; 62–212, Stationary Sources—Preconstruction Review;* 62–296, *Stationary Sources—Emissions Standards;* and 62–297, *Stationary Sources—Emissions Monitoring,* of the Florida SIP, along with the Florida Network Description and Ambient Air Monitoring Network Plan, provide for an ambient air quality monitoring system in the State. Annually, EPA approves the ambient air monitoring network plan for the state agencies. In May 2012, Florida submitted its monitoring network plan to EPA, and on September 11, 2012, EPA approved this plan. Florida's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2012–0692. EPA has made the preliminary determination that Florida's SIP and practices are adequate for the ambient air quality monitoring and data system related to the 2008 8-hour ozone NAAQS.

3. 110(a)(2)(C) *Program for enforcement of control measures including review of proposed new sources:* Florida's authority to regulate new and modified sources of the ozone precursors volatile organic compounds (VOCs) and nitrogen oxides (NO_X) to assist in the protection of air quality in nonattainment, attainment or unclassifiable areas is established in Chapters 62–210, *Stationary Sources—General Requirements, Section 200—Definitions;* and 62–212, *Stationary Sources—Preconstruction Review, Section 400—Prevention of Significant Deterioration,* of the Florida SIP.

At present, there are four SIP revisions that are relevant to EPA's review of FDEP's infrastructure SIP submission for the 2008 8-hour ozone NAAQS in connection with the current PSD-related infrastructure requirements. *See* sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) of the CAA. The EPA regulations that require these SIP revisions are: (1) ''Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule'' (November 29, 2005, 70 FR 71612) (hereafter referred to as the ''Phase II Rule''); (2) ''Prevention of Significant Deterioration and Title V Greenhouse Gas [GHG] Tailoring Rule; Final Rule'' (June 3, 2010, 75 FR 31514) (hereafter referred to as the ''GHG Tailoring Rule''); (3) ''Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers; Final Rule'' (May 16, 2008, 73 FR 28321) (hereafter referred to as the ''NSR $PM_{2.5}$ Rule''); and, (4) ''Final Rule on the Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC); Final Rule'' (October 20, 2010, 75 FR 64864) (hereafter referred to as the''$PM_{2.5}$ PSD Increment-SILs-SMC Rule (only as it relates to $PM_{2.5}$ Increments)'').

On October 19, 2007, and July 1, 2011, FDEP submitted revisions to EPA for approval into the Florida SIP to adopt federal requirements for NSR permitting promulgated in the Phase II Rule. FDEP's submittal addressed the structural PSD program revisions required by the Phase II Rule, including requirements to include NO_X as an ozone precursor for permitting purposes for PSD and nonattainment NSR. EPA published a final action approving FDEP's revisions which incorporate NO_X as an ozone precursor on June 15, 2012. *See* 77 FR 35862. Thus, EPA has preliminarily determined that the infrastructure SIP submission is approvable with respect to this issue.

The second revision pertains to revisions to the PSD program promulgated in EPA's June 3, 2010, Greenhouse Gas Tailoring Rule or ''GHG Tailoring Rule.'' *See* 75 FR 31514. Florida did not submit a SIP revision to adopt the appropriate emission thresholds for determining which new stationary sources and modification projects become subject to PSD permitting requirements for their GHG emissions as promulgated in the GHG Tailoring Rule. Therefore, Florida's federally-approved SIP contained errors that resulted in its failure to address, or provide adequate legal authority for, the implementation of a GHG PSD program in Florida. Approval of a revision to address GHG is required to meet 110(a)(2)(C). In the GHG SIP Call,[8] EPA determined that the State of Florida's SIP was substantially inadequate to achieve CAA requirements because its existing PSD program does not apply to GHG-emitting sources; the rule finalized a finding to the effect and promulgated SIP call for 15 state and local permitting authorities including Florida. EPA explained that if a state, such as Florida, identified in the SIP call, failed to submit the required corrective SIP revision by the applicable deadline, EPA would promulgate a FIP under CAA section 110(c)(1)(A) for that state to govern PSD permitting for GHG. On December 30, 2010, EPA promulgated a FIP [9] for Florida because the State failed to submit, by its December 22, 2010, deadline, the corrective SIP revision to apply its PSD program to sources of GHG consistent with the thresholds described in the GHG Tailoring rule. The FIP ensured that a permitting authority (i.e., EPA) would be available to issue preconstruction PSD permits to GHG-emitting sources in the State of Florida. EPA took these actions through interim final rulemaking, effective upon publication, to ensure the availability of a permitting authority—EPA—in Florida for GHG-emitting sources when they

[7] On February 22, 2013, EPA published a proposed action in the **Federal Register** entitled, ''State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction; Proposed Rule.''

[8] Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call, Final Rule, 75 FR 77698 (December 13, 2010).

[9] Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan—Final Rule, 75 FR 82246 (December 30, 2010).

became subject to PSD on January 2, 2011.

Since Florida currently does not have adequate legal authority in its SIP to address the GHG PSD permitting requirements established in the GHG Tailoring Rule, or at other appropriate levels, it does not satisfy portions of elements of the infrastructure requirements. As a result, EPA is proposing disapproval of FDEP's submission for the portions of infrastructure elements 110(a)(2)(C), (D)(i)(II), and (J) related to GHG PSD permitting requirements. EPA's proposed disapproval of these elements, if finalized, would not result in any further obligation on the part of Florida because EPA has already promulgated a FIP for the Florida PSD program to address permitting GHGs at or above the GHG Tailoring Rule thresholds. *See* 76 FR 25178. Thus, today's proposed action to disapprove FDEP's submission for sections 110(a)(2)(C), (D)(i)(II), and (J) as they relate to GHG PSD permitting requirements, once final, will not require any further action by either FDEP or EPA.

The third and fourth revisions pertain to the adoption of PSD and Nonattainment New Source Review (NNSR) requirements related to the implementation of the NSR $PM_{2.5}$ Rule and $PM_{2.5}$ PSD Increment-SILs-SMC Rule (only as it relates to $PM_{2.5}$ Increments). On March 15, 2012, FDEP submitted revisions to its PSD/NSR regulations for EPA approval to revise Florida's SIP and adopt required federal PSD permitting provisions governing the implementation of the NSR program for $PM_{2.5}$ as promulgated in the NSR $PM_{2.5}$ Rule and $PM_{2.5}$ increments pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS. Approval of these regulations into the SIP address the relevant requirements of sections 110(a)(2)(C), (D)(i)(II), and (J). EPA finalized approval of Florida's March 15, 2012, submittal on September 19, 2012. *See* 77 FR 58027.

EPA notes that on September 19, 2012, the Agency approved the SMC portion of the $PM_{2.5}$ PSD Increment-SILs-SMC Rule into the Florida SIP. *See* 77 FR 58027. Since that time, on January 22, 2013, the U.S. Court of Appeals for the District of Columbia, issued a decision that, *inter alia,* vacated the provisions adding the $PM_{2.5}$ SMC to the federal regulations, at 40 CFR 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c), that were promulgated as part of the 2010 $PM_{2.5}$ PSD Increment-SILs-SMC Rule. *See Sierra Club* v. *EPA,* 703 F.3d 458 (D.C. Cir. 2013). In its decision, the court held that EPA did not have the authority to use SMCs to exempt permit applicants from the statutory requirement in section 165(e)(2) of the CAA that ambient monitoring data for $PM_{2.5}$ be included in all PSD permit applications. Thus, although the $PM_{2.5}$ SMC was not a required element of a State's PSD program and thus not a structural requirement for purposes of infrastructure SIPs, were a SIP-approved PSD program that contains such a provision to use that provision to issue new permits without requiring ambient $PM_{2.5}$ monitoring data, such application of the SIP would be inconsistent with the court's opinion and the requirements of section 165(e)(2) of the CAA.

Given the clarity of the court's decision, it would now be inappropriate for Florida to continue to allow applicants for any pending or future PSD permits to rely on the $PM_{2.5}$ SMC in order to avoid compiling ambient monitoring data for $PM_{2.5}$. Because of the vacatur of the EPA regulations, the SMC provisions included in Florida's SIP-approved PSD programs on the basis of EPA's regulations are unlawful and no longer enforceable by law. Permits issued on the basis of these provisions as they appear in approved SIPs would be inconsistent with the CAA and difficult to defend in administrative and judicial challenges. Thus, the SIP provisions may not be applied even prior to their removal from the SIP. Florida should instead require applicants requesting a PSD permit, including those having already been applied for but for which the permit has not yet been received, to submit ambient $PM_{2.5}$ monitoring data in accordance with the CAA requirements whenever either direct $PM_{2.5}$ or any $PM_{2.5}$ precursor is emitted in a significant amount.[10] As the previously-approved $PM_{2.5}$ SMC provisions in the Florida SIP are no longer enforceable, EPA does not believe the existence of the provisions in the State's SIP precludes today's proposed approval of portions of the infrastructure SIP submission for Florida as it relates to the 2008 8-hour ozone NAAQS.

EPA intends to initiate a rulemaking to correct SIPs that were approved with regard to the $PM_{2.5}$ SMCs prior to the court's decision. EPA also advises the States to begin preparations to remove the $PM_{2.5}$ SMC provisions from their state PSD regulations and SIPs. However, EPA has not yet set a deadline requiring States to take action to revise their existing PSD programs to address the court's decision.

These SIP revisions and the FIP for GHG[11] address requisite requirements of infrastructure elements 110(a)(2)(C), D(i)(II), and (J). The FIP that is currently in place to address GHG requirements in Florida will remain until Florida submits a final submission to EPA for federal approval and EPA takes final action on the submission.

Finally, EPA notes that today's action is not proposing to approve or disapprove the State's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

EPA has made the preliminary determination that Florida's SIP and practices are adequate for program enforcement of control measures including review of proposed new sources related to the 2008 8-hour ozone NAAQS. For the portion of this element that EPA is disapproving related to GHG PSD permitting requirements, EPA has made the preliminary determination that the already promulgated FIP for Florida is adequate for program enforcement of control measures including review of proposed new sources related to the 2008 8-hour ozone NAAQS.

4. 110(a)(2)(D)(i) and (ii) *Interstate and International transport provisions:* Section 110(a)(2)(D) has two

[10] In lieu of the applicants' need to set out $PM_{2.5}$ monitors to collect ambient data, applicants may submit $PM_{2.5}$ ambient data collected from existing monitoring networks when the permitting authority deems such data to be representative of the air quality in the area of concern for the year preceding receipt of the application. EPA believes that applicants will generally be able to rely on existing representative monitoring data to satisfy the monitoring data requirement.

[11] (1) EPA's approval of Florida's PSD/NSR regulations which address the Ozone Implementation NSR Update requirements, (2) EPA's FIP for PSD GHG Tailoring Rule revisions which addresses the thresholds for GHG permitting applicability in Florida, (3) EPA's approval of Florida's NSR $PM_{2.5}$ Rule, and (4) EPA's approval of Florida's $PM_{2.5}$ PSD Increment-SILs-SMC Rule.

components; 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as ''prongs,'' that must be addressed in SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (''prong 1''), and interfering with maintenance of the NAAQS in another state (''prong 2''). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state interfering with measures required to prevent significant deterioration of air quality in another state (''prong 3''), or to protect visibility in another state (''prong 4''). Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. EPA's analysis of FDEP's infrastructure submission with regard to the requirements of 110(a)(2)(D) is as follows:

110(a)(2)(D)(i)(I): Florida does not currently have a section 110(a)(2)(D)(i)(I) submission for the 2008 8-hour ozone NAAQS before the Agency.[12] However, in accordance with the panel of the U.S. Court of Appeals for the D.C. Circuit opinion, a SIP submission addressing section 110(a)(2)(D)(i)(I) from the State of Florida is not currently required. *See EME Homer City,* 696 F.3d 7. The opinion in *EME Homer City* concluded that EPA cannot promulgate a FIP to address the requirements of 110(a)(2)(D)(i)(I) for a state until EPA has first quantified the emissions that must be prohibited under that provision. *See EME Homer City,* 696 F.3d at 28 (''explaining that EPA must, after quantifying state's obligations under section 110(a)(2)(D)(i)(I) give states an initial opportunity to implement the obligations through SIPs''). As such, the lack of a submission from Florida does not currently trigger a FIP pursuant to section 110(c)(1) unless the *EME Homer City* decision is reversed or otherwise modified by the Supreme Court.

110(a)(2)(D)(i)(II)—prong 3: With regard to prong 3 of section 110(a)(2)(D)(i), this requirement may be met by the state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a PSD program meeting all the current structural requirements of part C of title I of the CAA or (if the state contains a nonattainment area for the relevant pollutant) to a NNSR program that implements the 2008 8-hour ozone NAAQS. As discussed in more detail above with respect to section 110(a)(2)(C), FDEP's infrastructure SIP submission describes the PSD Program provisions contained in for Florida's SIP that provide the necessary structural PSD requirements to satisfy prong 3 requirements, with the exception of those necessary to address GHG permitting. Because the Florida SIP does not currently provide adequate legal authority to address GHG PSD permitting requirements, EPA is proposing disapproval of the Florida prong 3 infrastructure SIP submission related to the GHG PSD permitting requirements. As previously described, EPA has promulgated a FIP for Florida addressing these GHG permitting requirements, and as such, EPA's proposed disapproval, if finalized, would not result in further obligations on the part of Florida because the FIP addresses the permitting of GHGs at our above the applicable Tailoring Rule thresholds. *See* 75 FR 82246.

EPA has preliminarily determined that the Florida SIP meets the relevant PSD program requirements, with the exception of those for pertaining to GHG. Accordingly, in this action EPA is proposing to approve in part, and disapprove in part, Florida's infrastructure SIP submission as meeting the applicable requirements of prong 3 of section 110(a)(2)(D)(i).

110(a)(2)(D)(i)(II)—prong 4: Prong 4 of section 110(a)(2)(D)(i) requires that SIPs include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures to protect visibility in another state. In this rulemaking, EPA is not proposing any action on prong 4 and instead will do so in a separate action.

110(a)(2)(D)(ii) *Interstate and International transport provisions:* With regard to 110(a)(2)(D)(ii), Chapter 62–210, *Stationary Sources—General Requirements* of the Florida SIP outlines how Florida will notify neighboring states of potential impacts from new or modified sources. EPA is unaware of any pending obligations for the State of Florida pursuant to sections 115 or 126 of the CAA. EPA has made the preliminary determination that Florida's SIP and practices are adequate for insuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2008 8-hour ozone NAAQS.

5. 110(a)(2)(E) *Adequate resources:* Section 110(a)(2)(E) requires that each implementation plan provide (i) necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the State comply with the requirements respecting State Boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provisions.

In support of EPA's proposal to approve sections 110(a)(2)(E)(i), (ii), and (iii), EPA notes that FDEP is responsible for promulgating rules and regulations for the NAAQS, emissions standards general policies, a system of permits, and fee schedules for the review of plans, and other planning needs. As evidence of the adequacy of FDEP's resources, EPA submitted a letter to Florida on February 28, 2013, outlining 105 grant commitments and the current status of these commitments for fiscal year 2012. The letter EPA submitted to Florida can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2012–0692. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. Florida satisfactorily met all commitments agreed to in the Air Planning Agreement for fiscal year 2012, therefore Florida's grants were finalized. On July 30, 2012, EPA approved Florida statutes into the SIP to comply with section 128 respecting state boards. *See* 77 FR 44485. EPA has made the preliminary determination that Florida has adequate resources for implementation of the 2008 8-hour ozone NAAQS.

6. 110(a)(2)(F) *Stationary source monitoring system:* Florida's infrastructure submission describes how the State establishes requirements for emissions compliance testing and utilizes emissions sampling and analysis. It further describes how the State ensures the quality of its data through observing emissions and monitoring operations. Florida FDEP uses these data to track progress towards maintaining the NAAQS, develop control and maintenance strategies, identify sources and general emission levels, and determine compliance with emission regulations and additional EPA requirements. These requirements are provided in Chapters 62–210, *Stationary Sources—General*

[12] As previously described, Florida withdrew this portion of its infrastructure submission related to section 110(a)(2)(D)(i)(I) on April 30, 2013.

Requirements; 62–212, *Stationary Sources—Preconstruction Review;* 62–296, *Stationary Sources—Emissions Standards;* and 62–297, *Stationary Sources—Emissions Monitoring.*

Additionally, Florida is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Florida made its latest update to the NEI on February 27, 2013. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* EPA has made the preliminary determination that Florida's SIP and practices are adequate for the stationary source monitoring systems related to the 2008 8-hour ozone NAAQS.

7. 110(a)(2)(G) *Emergency power:* Florida's infrastructure SIP submission identifies air pollution emergency episodes and preplanned abatement strategies as outlined in Florida Statutes 403.131 and 120.569(2)(n). These statutes were submitted for inclusion to the SIP to address the requirements of section 110(a)(2)(G) of the CAA and have been approved by EPA on July 30, 2012. *See* 77 FR 44485. EPA has made the preliminary determination that Florida's SIP and practices are adequate for emergency powers related to the 2008 8-hour ozone NAAQS.

8. 110(a)(2)(H) *Future SIP revisions:* FDEP is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in Florida. FDEP has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the NAAQS. Florida does not have any nonattainment areas for the 2008 8-hour ozone standard but has made an infrastructure submission for this standard, which is the subject of this rulemaking. EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 2008 8-hour ozone NAAQS when necessary.

9. 110(a)(2)(J): EPA is proposing to approve in part, and disapprove in part, Florida's infrastructure SIP for the 2008 8-hour ozone NAAQS with respect to the requirements in section 110(a)(2)(J) to include a program in the SIP that provides for meeting the applicable consultation requirements of section 121, the public notification requirements of section 127, and the PSD and visibility protection requirements of part C of the Act.

110(a)(2)(J) (121 consultation) *Consultation with government officials:* Chapters 62–204, *Air Pollution Control Provisions* and 62–212, *Stationary Sources—Preconstruction Review,* as well as Florida's Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding Federal Land Managers), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. Florida adopted state-wide consultation procedures for the implementation of transportation conformity. These consultation procedures include considerations associated with the development of mobile inventories for SIPs. Implementation of transportation conformity as outlined in the consultation procedures requires FDEP to consult with federal, state and local transportation and air quality agency officials on the development of motor vehicle emissions budgets. EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate consultation with government officials related to the 2008 8-hour ozone NAAQS when necessary.

110(a)(2)(J) (127 public notification) *Public notification:* FDEP has public notice mechanisms in place to notify the public of ozone and other pollutant forecasting, including an air quality monitoring Web site providing ground level ozone alerts, *http://www.dep.state.fl.us/air/air_quality/countyaqi.htm.* Florida also has state statutes, 403.131, *Injunctive relief, remedies* and 120.569(n) (relating to emergency orders) which allow the state to seek injunctive relief to prevent irreparable damage to air quality. In addition, the Florida SIP contains federally-approved provisions to monitor air pollution episodes for ozone and particulate matter contained in Chapter 62–256.300, *Prohibitions.* EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 2008 8-hour ozone NAAQS when necessary.

110(a)(2)(J) (PSD) *PSD:* Florida's authority to regulate new and modified sources of the ozone precursors VOCs and NO_x to assist in the protection of air quality in nonattainment, attainment or unclassifiable areas is established in Chapters 62–210, *Stationary Sources—General Requirements, Section 200—Definitions,* and 62–212, *Stationary Sources—Preconstruction Review, Section 400—Prevention of Significant Deterioration* of the Florida SIP. Accordingly, as with the PSD related elements of the infrastructure SIP, this portion of element (J) also requires compliance with the Phase II Rule, the GHG Tailoring Rule, the NSR $PM_{2.5}$ Rule, and the $PM_{2.5}$ PSD Increment-SILs-SMC Rule. EPA has approved into the Florida SIP or has promulgated a FIP to address each of these requirements, and as such, the requisite PSD-related requirements of infrastructure element 110(a)(2)(J) have been addressed. However, as with infrastructure elements 110(a)(2)(C), and prong 3 of 110(a)(2)(D)(i), EPA has preliminarily determined that FDEP's infrastructure SIP submission does not fully meet element 110(a)(2)(J) due to the existing GHG permitting FIP for Florida. As discussed in more detail above with respect to section 110(a)(2)(C), FDEP's SIP contains provisions for Florida's PSD program that reflect relevant SIP revisions of the structural PSD requirements with the exception of the authority to regulate new GHG PSD permitting requirements at or above the levels of emissions set in the GHG Tailoring Rule, or at other appropriate levels. On December 30, 2010, EPA promulgated a FIP [13] for those states including Florida, because they failed to submit, a corrective SIP revision to apply its PSD program to sources of GHG consistent with the thresholds described in the GHG Tailoring rule.

EPA has preliminarily determined that the Florida SIP meets the relevant PSD program requirements, with the exception of those for pertaining to GHG. Accordingly, in this action EPA is proposing to approve in part, and

[13] Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan—Final Rule, 75 FR 82246 (December 30, 2010).

disapprove in part, Florida's infrastructure SIP submission as meeting the applicable requirements of 110(a)(2)(J). As previously described, EPA's proposed disapproval of section 110(a)(2)(J) related to GHG PSD permiting, if finalized, would not result in further obligations on the part of Florida because the FIP addresses the permitting of GHGs at our above the applicable Tailoring Rule thresholds. *See* 75 FR 82246.

110(a)(2)(J) *Visibility protection:* With regard to the visibility protection aspect of 110(a)(2)(J), EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, EPA finds that there are no applicable visibility obligations under part C ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. Florida has submitted SIP revisions to satisfy the requirements of the CAA Section 169A and 169B, and the regional haze and BART rules contained in 40 CFR 51.308. On November 29, 2012, EPA published a final rulemaking approving certain BART determinations under Florida's regional haze program. *See* 77 FR 71111. EPA has proposed full approval of the remaining aspects of Florida's regional haze program on December 10, 2012. *See* 77 FR 73369. In EPA's view, the current status of Florida's regional haze SIP as having not been fully approved is not a bar to full approval of the infrastructure SIP submission with respect to the visibility protection aspect of 110(a)(2)(J), and EPA is proposing to fully approve the infrastructure SIP for this aspect.

10. 110(a)(2)(K) *Air quality and modeling/data:* Chapter 62–204.800, *Federal Regulations Adopted by Reference,* incorporates by reference 40 CFR 52.21(l), which specifies that air modeling be conducted in accordance with 40 CFR part 51, Appendix W ''Guideline on Air Quality Models.'' These regulations demonstrate that Florida has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 8-hour ozone NAAQS. Additionally, Florida supports a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 1997 8-hour ozone NAAQS, for the Southeastern states. Taken as a whole, Florida's air quality regulations demonstrate that FDEP has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 8-hour ozone NAAQS. EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate the State's ability to provide for air quality and modeling, along with analysis of the associated data, related to the 2008 8-hour ozone NAAQS when necessary.

11. 110(a)(2)(L) *Permitting fees:* Florida addresses the review of construction permits as previously discussed in 110(a)(2)(C). Permitting fees in Florida are collected through the State's federally-approved title V fees program, according to State regulation 403.087(6)(a), *Permit Fees.* EPA has made the preliminary determination that Florida's SIP and practices adequately provide for permitting fees related to the 2008 8-hour ozone NAAQS when necessary.

12. 110(a)(2)(M) *Consultation/participation by affected local entities:* Chapter 62–204, *Air Pollution Control Provisions,* requires that SIPs be submitted in accordance with 40 CFR part 51, Subpart F, for permitting purposes. Florida statute 403.061(21) authorizes FDEP to ''[a]dvise, consult, cooperate and enter into agreements with other agencies of the state, the Federal Government, other states, interstate agencies, groups, political subdivisions, and industries affected by the provisions of this act, rules, or policies of the department.'' Furthermore, FDEP has demonstrated consultation with, and participation by, affected local entities through its work with local political subdivisions during the developing of its Transportation Conformity SIP and Regional Haze Implementation Plan. EPA has made the preliminary determination that Florida's SIP and practices adequately demonstrate consultation with affected local entities related to the 2008 8-hour ozone NAAQS when necessary.

V. Proposed Action

As described above, Florida has addressed the elements of the CAA section 110(a)(1) and (2) SIP requirements being proposed for approval to ensure that the 2008 8-hour ozone NAAQS are implemented, enforced, and maintained in Florida. EPA is now proposing two related actions on Florida's October 31, 2011, submission. First, EPA is proposing to approve Florida's infrastructure submission for the applicable requirements of the 2008 8-hour ozone NAAQS, with the exception prong 4 of section 110(a)(2)(D)(i), and the portions of sections 110(a)(2)(C), prong 3 of D(i), and (J) related to GHG PSD permitting. With respect to Florida infrastructure SIP submission related to prong 4 of section 110(a)(2)(D)(i), EPA will act on this portion of the submission in a separate action. With respect to the portions of sections 110(a)(2)(C), prong 3 of D(i) and (J) related to GHG PSD permitting requirements, EPA is proposing to disapprove Florida's submission related to these requirements.

VI. Statutory and Executive Order Reviews

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

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

methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 6, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2013–11868 Filed 5–17–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2012–0350; FRL–9815–2]

Approval and Promulgation of State Implementation Plans; State of Utah; Interstate Transport of Pollution for the 2006 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove a portion of a State Implementation Plan (SIP) submission from the State of Utah that is intended to demonstrate that its SIP meets certain interstate transport requirements of the Clean Air Act (''Act'' or ''CAA'') for the 2006 fine particulate matter (''$PM_{2.5}$'') National Ambient Air Quality Standards (NAAQS). This SIP submission addresses the requirement that Utah's SIP contain adequate provisions to prohibit air emissions from adversely affecting another state's air quality through interstate transport. Specifically, EPA is proposing to disapprove the portion of the Utah SIP submission that addresses the CAA requirement prohibiting emissions from Utah sources from significantly contributing to nonattainment of the 2006 $PM_{2.5}$ NAAQS in any other state or interfering with maintenance of the 2006 $PM_{2.5}$ NAAQS by any other state. Under a recent court decision, this disapproval does not trigger an obligation for EPA to promulgate a Federal Implementation Plan (FIP) to address these interstate transport requirements.

DATES: Comments must be received on or before June 19, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2012–0350, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: clark.adam@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Carl Daly, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2012–0350. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *http://www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly-available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Adam Clark, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–7104, *clark.adam@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The initials *CAIR* mean or refer to the Clean Air Interstate Rule

(iii) The initials *CSAPR* mean or refer to the Cross-State Air Pollution Rule

(iv) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(v) The initials *SIP* mean or refer to State Implementation Plan.

(vi) The initials *UDEQ* mean or refer to the Utah Department of Environmental Quality.

(vii) The words *Utah* and *State* mean the State of Utah.

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I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit CBI to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. 2006 $PM_{2.5}$ NAAQS and Interstate Transport

Section 110(a)(2)(D)(i) of the CAA identifies four distinct elements related to the evaluation of impacts of interstate transport of air pollutants. In this action for the state of Utah, EPA is addressing the first two elements of section 110(a)(2)(D)(i)—the two elements contained in section 110(a)(2)(D)(i)(I)—with respect to the 2006 $PM_{2.5}$ NAAQS.[1] The first element requires that each SIP for a new or revised NAAQS contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will ''contribute significantly to nonattainment'' of the NAAQS in another state. The second element requires that each SIP for a new or revised NAAQS contain adequate provisions to prohibit any source or other type of emissions activity in the state from emitting pollutants that will ''interfere with maintenance'' of the applicable NAAQS in any other state.

B. EPA Rules Addressing Interstate Transport for the 2006 $PM_{2.5}$ NAAQS in the Eastern Portion of the United States

EPA has addressed the requirements of section 110(a)(2)(D)(i)(I) for many states in the eastern portion of the country in three regulatory actions.[2] Most recently, EPA published the final Cross-State Air Pollution Rule (''CSAPR'' or ''Transport Rule'') to address the two elements of CAA section 110(a)(2)(D)(i)(I) in the Eastern United States with respect to the 2006 24-hour $PM_{2.5}$ NAAQS, the 1997 annual $PM_{2.5}$ NAAQS, and the 1997 8-hour ozone NAAQS (August 8, 2011, 76 FR 48208). CSAPR was intended to replace the earlier Clean Air Interstate Rule (CAIR) which was judicially remanded.[3] *See North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008). On August 21, 2012, the U.S. Court of Appeals for the D.C. Circuit issued a decision to vacate CSAPR. *See EME Homer City Generation, L.P.* v. *E.P.A.,* 696 F.3d 7 (D.C. Cir. 2012). The court also ordered EPA to continue implementing CAIR in the interim. On March 29, 2013, the United States and other parties asked the Supreme Court to review the *EME Homer City* decision. In the meantime, and unless the *EME Homer City* decision is reversed or otherwise modified, EPA intends to act in accordance with the opinion in *EME Homer City.*

Certain aspects of the *EME Homer City* opinion are potentially relevant to this proposed disapproval. First, the opinion concludes that a section 110(a)(2)(D)(i)(I) SIP submission cannot be considered a ''required'' SIP submission until EPA has defined a state's obligations pursuant to that section. See *EME Homer City,* 696 F.3d at 32 (''A SIP logically cannot be deemed to lack a 'required submission' or deemed to be deficient for failure to meet the good neighbor obligation before EPA quantifies the good neighbor obligation.'') EPA historically has interpreted section 110(a)(1) of the CAA as establishing the required submittal date for SIPs addressing all of the ''interstate transport'' requirements in section 110(a)(2)(D), including the provisions in section 110(a)(2)(D)(i)(I) regarding significant contribution to nonattainment and interference with maintenance. However, at this time in light of the *EME Homer City* opinion, EPA is not treating the section 110(a)(2)(D)(i)(I) SIP submission from Utah as a required SIP submission. Second, the *EME Homer City* opinion provides that EPA does not have authority to promulgate a FIP to address the requirements of section 110(a)(a)(2)(D)(i)(I) until EPA has identified emissions in a state that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state and given the state an opportunity to submit a SIP to address those emissions. *EME Homer City,* 696 F.3d at 28. Therefore, unless the *EME Homer City* decision is reversed or otherwise modified, any final disapproval would not obligate Utah to take any action or make a new SIP submission. Nor would it trigger an obligation for EPA to promulgate a FIP to address these interstate transport requirements.

C. EPA Guidance for SIP Submissions To Address Interstate Transport for the 2006 $PM_{2.5}$ NAAQS

On September 25, 2009, EPA issued a guidance memorandum that provides recommendations to states for making SIP submissions to meet the requirements of CAA section 110(a)(2)(D)(i) for the 2006 $PM_{2.5}$ standards (''2006 $PM_{2.5}$ NAAQS Infrastructure Guidance'' or

[1] This proposed action does not address the two elements of section 110(a)(2)(D)(i)(II) regarding interference with measures required to prevent significant deterioration of air quality or to protect visibility in another state. We will act on these elements in a separate rulemaking.

[2] *See* NOx SIP Call, 63 FR 57371 (October 27, 1998); Clean Air Interstate Rule (CAIR), 70 FR 25172 (May 12, 2005); and Transport Rule or Cross-State Air Pollution Rule, 76 FR 48208 (August 8, 2011).

[3] CAIR addressed the 1997 annual and 24-hour $PM_{2.5}$ NAAQS, and the 1997 8-hour ozone NAAQS. It did not address the 2006 24-hour $PM_{2.5}$ NAAQS.

''Guidance'').[4] With respect to the requirement in section 110(a)(2)(D)(i)(I) to prohibit emissions that would contribute significantly to nonattainment of the NAAQS in any other state, the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance essentially reiterated the recommendations for western states made by EPA in previous guidance addressing the 110(a)(2)(D)(i) requirements for the 1997 8-hour Ozone and 1997 $PM_{2.5}$ NAAQS.[5] The 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance advised states outside of the CAIR region to include in their section 110(a)(2)(D)(i)(I) SIP submissions an adequate technical analysis to support their conclusions regarding interstate pollution transport, *e.g.,* information concerning emissions in the state, meteorological conditions in the state and in potentially impacted states, monitored ambient pollutant concentrations in the state and in potentially impacted states, distances to the nearest areas not attaining the NAAQS in other states, and air quality modeling.[6] With respect to the requirement in section 110(a)(2)(D)(i)(I) to prohibit emissions that would interfere with maintenance of the NAAQS by any other state, the Guidance stated that SIP submissions must address this independent and distinct requirement of the statute and provide technical information appropriate to support the state's conclusions, such as information concerning emissions in the state, meteorological conditions in the state and in potentially impacted states, monitored ambient concentrations in the state and in potentially impacted states, and air quality modeling.

In assessing interstate transport of emissions from Utah, EPA continues to consider relevant the types of information that were suggested in the 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance. Such information may include, but is not limited to, the amount of emissions in the state relevant to the NAAQS in question, the meteorological conditions in the area, the distance from the state to the nearest monitors in other states that are appropriate receptors, or such other information as may be probative to consider whether sources in the state may contribute significantly to nonattainment or interfere with maintenance of the 2006 $PM_{2.5}$ NAAQS in other states. Modeling can be relied on when acceptable modeling technical analyses are available, but EPA does not believe that modeling is required if other available information is sufficient to evaluate the presence or degree of interstate transport in a specific situation.

III. Utah's Submittal

On September 21, 2010, the Utah Department of Environmental Quality (UDEQ) made a submission certifying that Utah's SIP is adequate to implement the 2006 $PM_{2.5}$ NAAQS for all the ''infrastructure'' requirements of CAA section 110(a)(2)(D), including the requirements of CAA section 110(a)(2)(D)(i)(I).[7] UDEQ points to the CSAPR proposal as evidence that the State does not contribute significantly to $PM_{2.5}$ NAAQS violations in down-wind states. Specifically, the submission states;

> On August 2, 2010, EPA proposed a new rule to replace the CAIR as a means to address interstate transport (see FR 75 No. 147, pp 45210). Again, there are certain western states that were found not to contribute in a significant way to any NAAQS violation, for either $PM_{2.5}$ or ozone, in the down-wind states. Utah is among those states. EPA's assessment regarding these western states is undoubtedly based on a regional scale technical analysis, and Utah will point to that analysis in order to conclude that there are no current or future emissions from within its boundaries that either cause or contribute in a significant way to NAAQS violations in any of the down-wind states.

IV. EPA's Evaluation

If a state chooses to submit a SIP to address the requirements of section 110(a)(2)(D)(i)(I) for a particular NAAQS, and the state believes that the existing SIP adequately meets those requirements, then the state should submit a technical demonstration, relying on information relevant to the particular NAAQS, in support of the state's conclusion. EPA may supplement the state's demonstration with information and analyses that EPA determines are relevant and consistent with EPA's interpretation of section 110(a)(2)(D)(i)(I).

In this case, Utah's submittal attempted to rely on statements in the CSAPR proposal to show that the state's current SIP was adequate for 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS. The submittal stated that in CSAPR, ''certain western states . . . were found not to contribute in a significant way to any NAAQS violation, for either $PM_{2.5}$ or ozone, in the down-wind states. Utah is among those states.'' This statement does not accurately characterize the analysis done during the development of CSAPR. EPA decided to conduct modeling to analyze interstate transport of emissions for only the eastern portion of the country. That decision, however, in no way constituted a determination about significant contribution or interference with maintenance for western states such as Utah that were outside the modeling domain. On the contrary, in the final CSAPR rule, EPA explained that ''EPA is making no specific finding for states that are not fully contained within the eastern 12 km modeling domain.''[8] (76 FR 48220). As a result, the State's submittal is inadequate to demonstrate that the Utah SIP meets the requirements of 110(a)(2)(D)(i) for the 2006 $PM_{2.5}$ NAAQS. The submittal does not correctly characterize the conclusions made during the CSAPR rulemaking process. In addition, it does not include any technical analysis or any demonstration that the existing SIP is adequate to prohibit emissions from Utah from significantly contributing to nonattainment or interfering with maintenance in another state. In particular, the Logan, Utah-Idaho multistate nonattainment area, which consists of one airshed in the Cache Valley, is located partially in Utah and partially in Idaho. Utah's submission provided no relevant information regarding the potential for interstate transport of emissions from sources in the Utah portion of the Logan, Utah-Idaho nonattainment area to the Idaho portion of the nonattainment area. In addition, considering the close proximity and shared topography between the Utah portion of Cache

[4] *See* Memorandum from William T. Harnett entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' September 25, 2009, available at *http://www.epa.gov/ttn/caaa/t1/memoranda/20090925_harnett_pm25_sip_110a12.pdf.*

[5] *See* Memorandum from William T. Harnett entitled ''Guidance for State Implementation Plan (SIP) Submission to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-hour ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' August 15, 2006, available at *http://www.epa.gov/ttn/caaa/t1/memoranda/section 110a2di_sip_guidance.pdf.*

[6] The 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance stated that EPA was working on a new rule to replace CAIR that would address issues raised by the court in the *North Carolina* case and that would provide guidance to states in addressing the requirements related to interstate transport in CAA section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS. It also noted that states could not rely on the CAIR rule for section 110(a)(2)(D)(i)(I) submissions for the 2006 24-hour $PM_{2.5}$ NAAQS because the CAIR rule did not address this NAAQS. *See* 2006 $PM_{2.5}$ NAAQS Infrastructure Guidance at 3.

[7] UDEQ's submission, dated September 21, 2010 is included in the docket for this action.

[8] Utah was not fully contained within the CSAPR 12km modeling domain. *See Air Quality Modeling Final Rule Technical Support Document* (June 2011), at 5–6.

Valley and the Franklin, Idaho portion, as well as other factors suggested in the 2009 Guidance (see section III.C), EPA cannot determine based on the weight of evidence that emissions from Utah do not contribute significantly to nonattainment or interfere with maintenance in another state.

As neither EPA's nor Utah's analysis has led to a factual finding that significant contribution does not exist, there is no basis for EPA to conclude that the existing SIP is adequate to satisfy the significant contribution to nonattainment and interference with maintenance elements of section 110(a)(2)(D)(i)(I). For these reasons, the SIP does not meet the requirements for approval and EPA thus proposes to disapprove the 110(a)(2)(D)(i)(I) portion of the SIP submittal.

This disapproval, however, neither constitutes a determination that Utah is significantly contributing to nonattainment in or interfering with maintenance in another state, nor quantifies Utah's obligations pursuant to section 110(a)(2)(D)(i)(I). Further, unless the D.C. Circuit's recent opinion in *EME Homer City Generation, L.P.* v. *E.P.A.,* 696 F.3d 7 (D.C. Cir. 2012) is reversed or otherwise modified,[9] the disapproval proposed herein by itself would not require Utah to take any additional action related to the requirements of 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ NAAQS at this time and would not obligate EPA to promulgate a FIP to address those requirements. As explained above, in *EME Homer City,* the D.C. Circuit concluded that a 110(a)(2)(D)(i)(I) SIP cannot be ''required'' until sometime after EPA quantifies the state's obligations pursuant to that section, and that EPA therefore cannot promulgate a FIP to address the requirements of 110(a)(2)(D)(i)(I) until after EPA has both quantified the state's obligation and given the state an initial opportunity to implement the obligations through a SIP. See *EME Homer City,* 696 F.3d at 28, 30–31. EPA has not yet determined whether Utah has any additional obligations under section 110(a)(2)(D)(i)(I) or quantified any such obligations. Therefore, pursuant to the *EME Homer City* decision, this 110(a)(2)(D)(i)(I) SIP submission from Utah was not a required SIP submission and thus Utah has no obligation at this time to resubmit a 110(a)(2)(D)(i)(I) SIP or take any other action related to the requirements of this section with respect to the 2006 $PM_{2.5}$ NAAQS. In addition, unless the *EME Homer City* opinion is reversed or modified, final action on the disapproval proposed herein would also not trigger any FIP obligation under CAA section 110(c), because pursuant to *EME Homer City,* at this time EPA lacks authority to promulgate a FIP to address the 110(a)(2)(D)(i)(I) requirements. *See id.* at 28–37.

[9] On March 29, 2013 the United States and other parties filed petitions for certiorari asking the Supreme Court to review the DC Circuit decision in *EME Homer City,* 696 F.3d 7 (DC Cir. 2012).

V. Proposed Action

EPA is proposing to disapprove the 110(a)(2)(D)(i)(I) portion of Utah's September 21, 2010 submission. We propose to disapprove this portion of the submission because it fails to demonstrate that the Utah SIP is adequate for the requirements of 110(a)(2)(D)(i)(I). As explained in detail above, unless the *EME Homer City* decision is reversed or modified, this disapproval will not trigger an obligation for EPA to promulgate a FIP to address these interstate transport requirements, nor will it require Utah to submit a revised interstate transport SIP to meet the requirements.

VI. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: May 8, 2013.

Howard M. Cantor,

Acting Regional Administrator, Region 8.

[FR Doc. 2013–11974 Filed 5–17–13; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 78, No. 97
Monday, May 20, 2013

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Notice of Public Meeting of the Assembly of the Administrative Conference of the United States

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the Assembly of the Administrative Conference of the United States will hold a meeting to consider four proposed recommendations and to conduct other business. This meeting will be open to the public.

DATES: The meeting will take place on Thursday, June 13, 2013, 2:00 p.m. to 6:00 p.m., and on Friday, June 14, 2013, 9:00 a.m. to 12:00 noon. The meeting may adjourn early if all business is finished.

ADDRESSES: The meeting will be held at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 (Main Conference Room).

FOR FURTHER INFORMATION CONTACT: Shawne McGibbon, General Counsel (Designated Federal Officer), Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW., Washington, DC 20036; Telephone 202–480–2088; email *smcgibbon@acus.gov.*

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States makes recommendations to administrative agencies, the President, Congress, and the Judicial Conference of the United States regarding the improvement of Federal administrative procedures (5 U.S.C. 594). The membership of the Conference, when meeting in plenary session, constitutes the Assembly of the Conference (5 U.S.C. 595).

Agenda: The Assembly will discuss and consider the following recommendations:

- *Improving Consistency in Social Security Disability Adjudications.* This recommendation identifies ways to improve the adjudication process for Social Security disability claims at the administrative law judge hearing stage and at the Appeals Council, and suggests changes to the evaluation of opinion evidence from medical professionals.
- *Benefit-Cost Analysis at Independent Regulatory Agencies.* This recommendation highlights a series of best practices directed at independent regulatory agencies in the preparation of benefit-cost analyses that accompany proposed and final rules.
- *Science in the Administrative Process.* This recommendation offers several proposals to promote transparency in agencies' scientific decisionmaking, including: articulation of questions to be informed by science information; attribution for agency personnel who contributed to scientific analyses; public access to underlying data and literature; and conflict of interest disclosures for privately funded research used by the agencies in licensing, rulemaking, or other administrative processes.
- *The Administrative Record in Informal Rulemaking.* This recommendation offers best practices for agencies in the compilation, preservation, and certification of records in informal rulemaking, and supports the judicial presumption of regularity for agency administrative records except in certain limited circumstances.

Additional information about the proposed recommendations, as well as other materials related to the meeting, can be found at the 58th Plenary Session page on the Conference's Web site (*http://www.acus.gov/meetings-and-events/plenary-meeting/58th-plenary-session*).

Public Participation: The Conference welcomes the attendance of the public at the meeting, subject to space limitations, and will make every effort to accommodate persons with disabilities or special needs. Members of the public who wish to attend in person are asked to RSVP online at the 58th Plenary Session Web page listed above, no later than two business days before the meeting, in order to facilitate entry. Members of the public who attend the meeting may be permitted to speak only with the consent of the Chairman and the unanimous approval of the members. If you need special accommodations due to disability, please inform the Designated Federal Officer noted above at least 7 days in advance of the meeting. The public may also view the meeting through a live webcast of the meeting, which will be available at: *http://acus.granicus.com/ViewPublisher.php?view_id=2.* In addition, the public may follow the meeting on our Twitter feed @acusgov or hashtag #58thPlenary.

Written Comments: Persons who wish to comment on any of the proposed recommendations may do so by submitting a written statement either online by clicking ''Submit a Comment'' on the 58th Plenary Session Web page listed above or by mail addressed to: June 2013 Plenary Session Comments, Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW., Washington, DC 20036. Written submissions must be received at least 5 business days prior to the meeting to assure consideration by the Assembly.

Dated: May 14, 2013.

Shawne McGibbon,

General Counsel.

[FR Doc. 2013–11880 Filed 5–17–13; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands, Colorado and Kansas, Oil and Gas Leasing Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands (PSICC) are initiating the preparation of an environmental impact statement (EIS). The EIS will disclose the effects of updating the potential oil and gas areas available and unavailable for lease, the appropriate and applicable lease stipulations, and post-lease oil and gas

development that is reasonably foreseeable as a consequence of conducting a leasing program on the PSICC. The proposed action includes the following elements: identifying what lands will be available for oil and gas leasing; what stipulations need to be attached to oil and gas leasing for the protection of other resources; and what forest/grasslands plan amendments to the 1984 PSICC Land and Resource Management Plan (Forest Plan) may be needed to incorporate the revised oil and gas leasing decision. The EIS will document changed conditions and new information since the PSICC 1992 Oil and Gas Leasing Final EIS and Record of Decision, and incorporate that information into the analysis of potential effects of leasing on other resources. Changes in conditions and information since the 1992 leasing EIS and decision include new and improved oil and gas drilling, completion, and production technology; proposed listing of the Lesser Prairie Chicken as a threatened species; increased urban development adjacent to the Forest boundary; and promulgation of a rule to protect roadless areas in Colorado.

The scope of the analysis is Forest and Grassland-wide.

DATES: Comments concerning the scope of this analysis should be received by June 19, 2013. The draft environmental impact statement is expected in January of 2014 and the final environmental impact statement is expected in September of 2014. The PSICC will convene five meetings on five separate districts on the Forest. The meetings will be taking place over two weeks starting on May 14, 2013. The Supplementary Information section of this document provides public meeting addresses, dates and times.

ADDRESSES: Send written comments to:

Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands Oil and Gas Scoping

Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands, 2840 Kachina Dr., Pueblo, Colorado 81008

Submit electronic comments to: *https://cara.ecosystem-management.org/Public//CommentInput?Project=33788.*

SUPPLEMENTARY INFORMATION: Project alternative maps, draft oil and gas stipulations and additional project information is available at the following Web site: *http://www.fs.usda.gov/detail/psicc/landmanagement/projects/?cid=stelprdb5418254.*

Public Open Houses

Five public open houses are planned at the following places and times:

May 14, 2013 from 6:30 p.m. to 8:00 p.m. in the Point of Rocks Room, 625 Colorado, Elkhart, Kansas 67950.

May 15, 2013 from 6:30 p.m. to 8:00 p.m. in the Minnick Building at the Baca County Fairgrounds, 28500 County Road 24.6, Springfield, Colorado 81073.

May 21, 2013 at the from 6:30 p.m. to 8:00 p.m. at the Walsenberg Community Meeting Room in 928 S. Russell St., Walsenberg, Colorado 81089.

May 22, 2013 from 6:30 p.m. to 8:00 p.m. at Bear Creek Elementary School, 1330 Creekside Dr., Monument, Colorado 80132.

May 23, 2013 from 6:30 p.m. to 8:00 p.m. at the North West Fire Protection District 21455, U.S. Highway 285 District, Fairplay, Colorado 80440.

FOR FURTHER INFORMATION CONTACT: John Dow, Forest Planner, Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands, 2840 Kachina Dr, Pueblo, Colorado 81008, Phone: (719) 553–1476.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at -800–877–8339 between 8 a.m. and 8 p.m., Eastern Time Monday through Friday.

Purpose and Need for the Action

The Pike and San Isabel National Forests and the Cimarron and Comanche National Grasslands (PSICC) issued its current oil and gas leasing availability decision in 1992 (Final Oil and Gas Leasing Environmental Impact Statement and Record of Decision). The FS has provided consent to BLM to lease some PSICC lands since the 1992 decision was implemented and currently has pending requests to lease roughly another 27,000 acres of PSICC lands. Before the FS can authorize the BLM to lease these lands, it must verify that oil and gas leasing is adequately addressed in a NEPA document. Since 1992 information and circumstances considered under that decision have changed, including technological advances in oil and gas development activities, increased urban and suburban development, and new threatened and endangered species. Consequently, the Forest Supervisor of the PSICC has identified a need to prepare a new Oil and Gas Leasing EIS. The new Oil and Gas Leasing EIS will consider the new information or changed conditions across the Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands to determine which NFS lands administered by the PSICC should be made available for oil and gas leasing and what lease stipulations should apply to those lands for the protection of other resources. The Bureau of Land Management will be a cooperating agency in this effort. The Environmental Impact Statement (EIS) will be prepared in a manner that would support BLM's independent decision to include those NFS lands administered by the PSICC that are made available for leasing, in future competitive oil and gas lease sales. Hence, the purpose for the proposed action is to allow both agencies to satisfy their respective regulatory obligations to respond to both pending and future requests to lease PSICC lands for oil and gas.

The purpose of the proposed action is to: (1) Ensure that the new technology and information is considered and adequately addressed in a NEPA document and is consistent with the PSICC land and resource management plan prior to the leasing of specific NFS lands ; (2) Fulfill the federal government's policy to '' foster and encourage private enterprise in the orderly and economic development of domestic resources to help assure satisfaction of industrial, security, and environmental needs'' (Mining and Minerals Policy Act of 1970), while continuing to sustain the land's productivity for other uses and capability to support biodiversity goals (US Forest Service Minerals Program Policy); and (3) Enable the BLM to exercise its discretionary authority to offer and issue leases on NFS lands administered by the PSICC.

Proposed Action

The Forest Service proposes to identify lands administered by the PSICC that would be administratively available for oil and gas leasing and to identify which stipulations would be necessary in areas where protection of surface resources can be reasonably assured and is otherwise in accordance with law and regulation.

The Proposed Action considers the following: (1) Information that addresses new and different circumstances from those analyzed under the 1992 leasing decision; (2) lease stipulations on future leases, where needed, on lands identified as administratively available for leasing, for the purpose of protecting other resources including—(a) No Surface Occupancy (NSO) stipulations for areas identified as needing greater surface resource protection, laws, regulations, policies, and Forest Plan Standards such as, species listed under the Endangered Species Act, slopes

greater than 60%; upper tier roadless acres, identified in the Colorado Roadless Rule, on leases issued after July 3. 2012; (b) Controlled Surface Use (CSU) for other specific resource concerns (c) Timing Limitations (TL) for certain—potential raptor breeding territories and winter roost sites; deer, elk, moose and pronghorn habitats; and (4) prohibition of road construction or reconstruction on oil and gas leases issued within a Colorado Roadless Area after July 3, 2012.

Current valid existing leases, including the associated terms, conditions, and stipulations would not be considered nor affected by this analysis, nor would the exercising of reserved and outstanding mineral rights on NFS lands. Proposed land availability and lease stipulation changes would only affect leases issued after a decision is implemented. The proposed changes would apply to new leases on lands that are currently leased after existing leases have been terminated, relinquished, or subsequently nominated for lease.

Possible Alternatives

(1) No New Leasing—Under this alternative, no new NFS lands administered by the PSICC would be available in the future for oil and gas leasing. Operations on existing leases would continue under applicable lease terms, statutory, and regulatory direction, and Forest Plan direction. Existing federal oil and gas leases on the PSICC that are not extended by production would terminate at the conclusion of their primary term, and those lands would not be available for further leasing. Implementation of this alternative would require a Forest Plan amendment to identify lands as closed to oil and gas leasing.

(2) No Action (Current Management)—This alternative would continue, with no changes in oil and gas leasing availability and no new or changed stipulations on the PSICC as directed by the RODs for the PSICC 1992 Oil and Gas Leasing EIS (February 12, 1992) and the Land and Resource Management Plan (November 18, 1984).

Lead and Cooperating Agencies

The Forest Service is the lead agency. As the agency responsible for offering, selling, and issuing leases, the BLM will participate as a cooperating agency under a memorandum of understanding (MOU). Additionally, the United States Fish and Wildlife Agency (USFWS) and the Colorado Department of Natural Resources will participate as cooperating agencies, under separate MOUs, to provide resource specific expertise when needed.

Responsible Official

The Forest Service responsible official is Jerri Marr, Forest Supervisor, Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands, 2840 Kachina Dr., Pueblo, CO 81008.

The BLM responsible official is Keith Berger, Field Office Manager, Royal Gorge Field Office, 3028 Main St., Canon City, CO 81212.

Nature of the Decision To Be Made

The Responsible Official will determine whether, if, and how the current oil and gas leasing decision, as it relates to land availability and lease stipulations should be changed based on current information and analysis. The Responsible Official will decide which lands administered by the PSICC will be administratively available for oil and gas leasing, which land will be administratively unavailable for oil and gas leasing through management direction or legal reasons, and which lease stipulations would be applied to future oil and gas leases for the protection of other resources [36 CFR 228.102(c)]. Subsequent to the Responsible Official's decision, the Regional Forester will authorize the BLM to offer specific lands for lease. When lands are nominated for leasing, the Forest Service will (1) verify that leasing the specific lands has been adequately addressed in a National Environmental Policy Act (NEPA) document and is consistent with the Forest Plan, and that no significant new information or circumstances would require further analysis; (2) ensure that conditions of surface occupancy are properly included as stipulations in resulting leases; and (3) determine that operations and development could be allowed somewhere on each proposed lease, except where stipulations will prohibit all surface occupancy [36 CFR 228.102(e)]. The BLM State Director must decide whether to offer for lease specific lands authorized for leasing by the PSICC, and must include Forest Service stipulations on any leases offered on NFS lands.

Scoping Process

The first formal opportunity to comment on the revised oil and gas leasing availability and stipulations proposal is during the scoping process (40 CFR 1501.7), which begins with the issuance of this Notice of Intent. The Forest Service requests comments on the nature and scope of potential environmental, social, and economic issues, and possible project alternatives related to oil and gas leasing on NFS lands administered by the PSICC. The Forest Service will work directly with tribal governments to address issues that would significantly or uniquely affect them.

Five open house meetings are planned. The meeting addresses, dates and times are provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

Comment Requested

This notice of intent initiates the scoping process, which guides the development of the PSICC oil and gas leasing availability environmental impact statement. Through the 1992 Oil and Gas EIS and decision, the PSICC has an understanding of the broad range of perspectives on the resource issues and social values attributed to resource activities on the PSICC. Consequently, site-specific comments or concerns are the most important types of information the PSICC needs from the public scoping process. In scoping, the agency, with the assistance of the public, determines the scope of the issues to be addressed and identifies the significant issues related to the proposed action (see 40 CFR 1501.7).

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the revised plan and the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewers' concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

Comments received in response to this solicitation, including the names and addresses of those who comment will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered.

Send written comments to:

Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands Oil and Gas Scoping

Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands, 2840 Kachina Dr., Pueblo, Colorado 81008.

Submit electronic comments to *psicc_oandg@fs.fed.us.*

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Only individuals or entities who submit timely and specific written

comments will have eligibility (36 CFR 218.5) to file an objection under 36 CFR 218.8. For objection eligibility, each individual or representative from each entity submitting timely and specific written comments must either sign the comment or verify identity upon request. Issues raised in an objection must be based on previously submitted timely, specific written comments regarding the proposed action unless based on new information arising after the designated comment opportunities.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: May 14, 2013.

Jerri Marr,

Forest Supervisor, Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands.

[FR Doc. 2013–11909 Filed 5–17–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Colorado Recreation Resource Advisory Committee Meeting

AGENCY: Rocky Mountain Region, Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Colorado Recreation Resource Advisory Committee will tentatively meet in Glenwood Springs, CO. The purpose of the meeting is to review proposals for a standard amenity fee area change and new fee projects. These fee proposals will include new rentals for Fitton and Off Cow Camp cabins located on the Rio Grande National Forest and an area change at East Maroon Wilderness Portal, West Maroon Wilderness Portal and Maroon Lake on the White River National Forest. Proposals, updates, and other information can be found on the Colorado Recreation Resource Advisory Committee Web site at: *http://www.fs.usda.gov/goto/r2/rac-colorado*.

DATES: The meeting will be held June 5, 2013 from 8 a.m.–5 p.m. This meeting will only be held if a quorum is present.

ADDRESSES: The meeting will be held at the Glenwood Suites, 2625 Gilstrap Court, Glenwood Springs, CO 81601. Send written comments to Jim Bedwell, Designated Federal Officer, 740 Simms Street Golden, CO 80401 or *jbedwell@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Jane Leche, Colorado Recreation Resource Advisory Committee Coordinator, at 303–275–5349 or *jleche@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring recreation fee matters to the attention of the Committee may file written statements with the Committee Coordinator before or after the meeting. A public input session will be provided at the meeting and individuals who made written requests by May 29, 2013 will have the opportunity to address the Committee at the meeting. Meeting agenda and status can be found at: *http://www.fs.usda.gov/goto/r2/rac-colorado*.

The Recreation RAC is authorized by the Federal Land Recreation Enhancement Act, which was signed into law by President Bush in December 2004.

Dated: May 14, 2013.

Craig Bobzien,

Acting Deputy Regional Forester, Operations, Rocky Mountain Region.

[FR Doc. 2013–11906 Filed 5–17–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: National Survey of Fishing, Hunting, and Wildlife-associated Recreation (FHWAR) Pre-screener Test.

OMB Control Number: None

Form Number(s): FH–PS(T), FHW–Q1, FHW–W1, FHW–QW1, FHW–Q2, FHW–W2, FHW–QW2, FHW–Q3, FHW–W3, FHW–QW3.

Type of Request: New collection.

Burden Hours: 1,750.

Number of Respondents: 15,000.

Average Hours per Response: 7 minutes.

Needs and Uses: The U.S. Fish and Wildlife Service (FWS) and the U.S. Census Bureau conducted (under separate Office of Management and Budget (OMB) clearance number 1018–0088) the 2011 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (FHWAR) from April 2011 through May 2012. The FHWAR is authorized under the Fish and Wildlife Act of 1956 and the Wildlife and Sport Fish Restoration Programs Improvement Act of 2000. The Census Bureau is authorized to conduct the FHWAR under Title 13, United States Code Section 8(b). The FHWAR data, collected approximately every five years, assist Federal and State agencies in administering the Sport Fish and Wildlife Restoration grant programs and provide up-to-date information on the uses and demands for wildlife-related recreation resources, trends in uses of those resources, and a basis for developing and evaluating programs and projects to meet existing and future needs.

The FHWAR is an address-based survey conducted in three waves whose sample is selected from the Master Address File. In 2011, because of limited funding, we had to modify our data collection procedure from computer-assisted personal interviewing (CAPI) to mostly computer-assisted telephone interviewing (CATI) with limited CAPI to stay within budget. In an attempt to collect household phone numbers for CATI, we had the telephone center conduct a telephone research operation and we matched our addresses to a locating vendor. Unfortunately, neither operation had a high success rate in obtaining the correct phone numbers for our addresses. This caused the Wave 1 CATI response rates to plummet. Wave 2 and Wave 3 CATI did better because the majority of the telephone numbers were provided by the respondents in Wave 1.

Because our 2011 methodology for obtaining phone numbers did not work as expected, we (Census and FWS) would like to research new methodologies to collect household phone numbers for our sample addresses through a pre-screener test. The purpose of the test will be to determine what percentage of households will return a mail or Internet questionnaire with a telephone number that reaches the sample address. This proposed research is directly related to the 2011 FHWAR and is vital for future iterations of the survey since the majority of interviewing will continue in CATI which is less expensive than CAPI.

The pre-screener test is a two-part test. The first part of the test is a mail operation that will ask household respondents to complete a pre-screener survey by paper questionnaire or by Internet for the purpose of obtaining household telephone numbers, verifying the sample address, and obtaining general household-level information on

hunting, fishing, and wildlife watching activities. The mail operation will include three panels. The first panel will receive a letter and a self-administered paper pre-screener questionnaire. The letter will ask a household member to complete the paper questionnaire and to return it by mail to the Census Bureau. The second panel will receive a letter with an Internet invitation for a household member to complete the pre-screener on the Internet. The third panel will receive a letter, paper questionnaire, and information on how to complete an interview by Internet. In this panel, the household member is given a choice for conducting the pre-screener by paper or by Internet. We estimate that both the paper and Internet pre-screener will take approximately 5 minutes to complete. If a household does not complete the pre-screener in the requested time frame, we will mail up to two additional packages (that include the same materials as the initial mailing) requesting the household's participation. The sample size for each of the panels will be 5,000 sample households.

The second part of the test is a telephone follow-up operation in which we will verify that the phone numbers collected from the mail and Internet pre-screener either reached, or did not reach, the sample addresses. This telephone interview will last approximately 2 minutes.

Since our methodology for reaching our sample addresses by telephone for the 2011 FHWAR yielded poor results, we need to research and analyze alternative methods to help us obtain household phone numbers for the 2016 FHWAR. If we find a methodology that is successful, we will use the results internally to determine the percentage of pre-screeners needed to obtain the 2016 FHWAR sample workload.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 8(b).

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: May 14, 2013.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–11835 Filed 5–17–13; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–5–2013]

Foreign-Trade Zone 41—Milwaukee, Wisconsin; Authorization of Production Activity; Subzone 41J; Generac Power Systems, Inc. (Generators, Pressure Washers, Engines and Other Related Components); Whitewater, Edgerton, and Jefferson, Wisconsin

On January 14, 2013, the Port of Milwaukee, grantee of FTZ 41, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Generac Power Systems, Inc., within Subzone 41J, at sites in Whitewater, Edgerton, and Jefferson, Wisconsin.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (78 FR 5773, 01–28–2013). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: May 14, 2013.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2013–11973 Filed 5–17–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Silicon Metal From the People's Republic of China: Final Results and Final No Shipments Determination of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 27, 2013, the Department of Commerce (the ''Department'') published the *Preliminary Results* of the 2011–2012 administrative review of the antidumping duty order on silicon metal from the People's Republic of China (''PRC'').[1] The period of review (''POR'') is June 1, 2011, through May 31, 2012. In the *Preliminary Results,* we determined that the sole company under review, Shanghai Jinneng International Trade Co., Ltd. (''Shanghai Jinneng''), did not have any reviewable transactions during the POR. We gave interested parties an opportunity to comment on the *Preliminary Results,* but none were received. In these final results of review, we continue to find that Shanghai Jinneng did not have any reviewable transactions during the POR.

DATES: *Effective Date:* May 20, 2013.

FOR FURTHER INFORMATION CONTACT: Lori Apodaca, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4551.

SUPPLEMENTARY INFORMATION:

Background

On February 27, 2013, the Department published the *Preliminary Results.* We invited interested parties to submit comments on the *Preliminary Results,* but none were received. The Department has conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the ''Act'').

Scope of the Order

Imports covered by the order are shipments of silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight. Also covered by the order is silicon metal from the PRC containing between 89.00 and 96.00 percent silicon by weight but which contain a higher aluminum content than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (''HTSUS'') as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTSUS) is not subject

[1] *See Silicon Metal From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012,* 78 FR 13321 (February 27, 2013) (''*Preliminary Results*'').

to the order. Although the HTSUS subheadings are provided for convenience and for customs purposes, the written description of the merchandise, as set forth in the order, is dispositive.[2]

Final Determination of No Shipments

In the *Preliminary Results,* we preliminarily determined that Shanghai Jinneng did not have any reviewable transactions during the POR. Shanghai Jinneng submitted a timely-filed certification that it had no sales of subject merchandise to the United States during the POR.[3] Consistent with the Department's assessment practice in non-market economy (''NME'') cases, we stated in the *Preliminary Results* that the Department would not rescind the review in these circumstances but, rather, would complete the review with respect to Shanghai Jinneng and issue appropriate instructions to U.S. Customs and Border Protection (''CBP'') based on the final results of the review. As stated above, we did not receive any comments on our *Preliminary Results* nor did we receive information from CBP indicating that there were reviewable transactions from Shanghai Jinneng during the POR. Therefore, we continue to determine that Shanghai Jinneng had no reviewable transactions of subject merchandise during the POR. Consistent with our ''automatic assessment'' clarification, the Department will issue appropriate instructions to CBP based on our final results.[4]

Assessment

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review. The Department recently announced a refinement to its assessment practice in NME cases.[5] Pursuant to this refinement in practice, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the NME-wide rate.[6]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For Shanghai Jinneng, which claimed no shipments, the cash deposit rate will remain unchanged from the rate assigned to the company in the most recently completed review of the company; (2) for previously investigated or reviewed PRC and non-PRC exporters who are not under review in this segment of the proceeding but who have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate the cash deposit rate will be the PRC-wide rate of 139.49 percent;[7] and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to the administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: May 14, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–11968 Filed 5–17–13; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Silicon Metal From the People's Republic of China: Continuation of Antidumping Duty Order,* 77 FR 23660 (April 20, 2012).

[3] *See Preliminary Results,* 78 FR at 13321.

[4] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011) (''*Assessment Practice Refinement*''). *See also* the ''Assessment'' section of this notice, below.

[5] *See Assessment Practice Refinement.*

[6] *See id.,* 76 FR at 65694.

[7] For an explanation of the calculation of the PRC-wide rate, *see Final Determination of Sales at Less Than Fair Value: Silicon Metal from the People's Republic of China,* 56 FR 18570, 18571–2 (April 23, 1991).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Amended Final Results of Antidumping Duty Administrative Review; 2010–2011

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') is amending the final results of the eighth administrative review and aligned new shipper reviews on certain frozen fish fillets (''fish fillets'') from the Socialist Republic of Vietnam (''Vietnam'') to correct certain ministerial errors.[1] The period of review (''POR'') is August 1, 2010, through July 31, 2011.

DATES: *Effective Date:* May 20, 2013.

FOR FURTHER INFORMATION CONTACT: Paul Walker (Anvifish), Susan Pulongbarit (Vinh Hoan), Alex Montoro (An Phu and GODACO) or Seth Isenberg (Docifish), AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone 202–482–0413, 202–482–4031, 202–482–0238, or 202–482–0588, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 15, 2013 the Department disclosed to interested parties its calculations for the *Final Results.* Between March 20, and March 25, 2013, we received ministerial error comments

[1] *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2010–2011,* 78 FR 17350 (March 21, 2013) (''*Final Results*'').

and rebuttal comments from interested parties.[2]

Scope of the Order

For a full description of the products covered by the antidumping duty order, *see* Memorandum to Paul Piquado, Assistant Secretary for Import Administration, through Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, from James C. Doyle, Director, Office 9, ''Eighth Administrative Review and Aligned New Shipper Reviews of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Ministerial Error Allegation Memorandum,'' dated concurrently with this notice (''Ministerial Error Memo''), which is incorporated by reference.

Ministerial Errors

Section 751(h) of the Tariff Act of 1930, as amended (the ''Act''), and 19 CFR 351.224(f) define a ''ministerial error'' as an error ''in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any similar type of unintentional error which the Secretary considers ministerial.'' After analyzing interested parties' ministerial error comments, we have determined, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), that we made the following ministerial errors in our calculations for the *Final Results:* (a) We unintentionally mislabeled Anvifish's whole fish usage rate; (b) we inadvertently miscalculated Docifish's diesel fuel consumption; and (c) we unintentionally included returned sales in Anvifish's and Vinh Hoan's margin calculations. For a detailed discussion of all alleged ministerial errors, as well as the Department's analysis, *see* the Ministerial Error Memo.

In accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the *Final Results* of the administrative review of fish fillets from Vietnam. The revised weighted-average dumping margins are detailed below.

Amended Final Results of the Administrative Review

The amended weighted-average dumping margins for the administrative review are as follows:

Exporter	Weighted-average margin (USD/kg) [3]
Vinh Hoan Corporation [4]	0.19
Anvifish Joint Stock Company [5]	2.39
An Giang Agriculture and Food Import-Export Joint Stock Company	1.29
Asia Commerce Fisheries Joint Stock Company	1.29
Binh An Seafood Joint Stock Company	1.29
Cadovimex II Seafood Import-Export and Processing Joint Stock Company	1.29
Hiep Thanh Seafood Joint Stock Company	1.29
Hung Vuong Corporation	1.29
Nam Viet Corporation	1.29
NTSF Seafoods Joint Stock Company	1.29
QVD Food Company Ltd. [6]	1.29
Saigon Mekong Fishery Co., Ltd	1.29
Southern Fisheries Industries Company Ltd	1.29
Vinh Quang Fisheries Corporation	1.29
Vietnam-Wide Rate [7]	[8] 2.11

Disclosure

We will disclose the calculations performed for these amended final results to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the amended final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the amended final results of this administrative review and new shipper reviews. However, on April 9, 17 and 23, 2013, the U.S. Court of International Trade issued preliminary injunctions enjoining liquidation of certain entries made during the POR which are subject to the antidumping duty order on fish fillets from Vietnam.[9] Accordingly, the Department will not issue assessment instructions to CBP for any entries subject to the above-mentioned injunctions after publication of this notice.

For assessment purposes, we calculated importer (or customer)-specific assessment rates for merchandise subject to this review. We will continue to direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.,* per-kg) rates by the weight in kilograms of each entry of the subject merchandise during the POR. Specifically, we calculated importer-specific duty assessment rates on a per-unit rate basis by dividing the total dumping margins (calculated as the difference between normal value and export price, or constructed export price) for each importer by the total sales quantity of subject merchandise sold to that importer during the POR. If an importer (or customer)-specific assessment rate is *de minimis* (*i.e.,* less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's) entries of subject merchandise without regard to antidumping duties, in accordance with 19 CFR 351.106(c)(2).

[2] The interested parties include: The Catfish Farmers of America, and individual U.S. catfish processors (collectively ''Petitioners''), An Phu Seafood Corporation (''An Phu''), Anvifish Joint Stock Company (''Anvifish''), Docifish Corporation (''DOCIFISH''), Godaco Seafood Joint Stock Company (''GODACO''), and Vinh Hoan Corporation (''Vinh Hoan'').

[3] In the third administrative review of the order, the Department determined that it would calculate per-unit assessment and cash deposit rates for all future reviews. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission,* 73 FR 15479, 15480–81 (March 24, 2008).

[4] This rate is applicable to the Vinh Hoan Group, which includes Vinh Hoan, Van Duc Food Export Joint Company and Van Duc Tien Giang. In the sixth review of the order, the Department found Vinh Hoan, Van Duc, and VDTG to be a single entity. *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Preliminary Results and Partial Rescission of the Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review,* 75 FR 56062, 56068 (September 15, 2010). Because there has been no evidence submitted since that review which would call this determination into question, we continue to find these companies to be part of a single entity. Therefore, we will assign this rate to the companies in the single entity.

[5] Includes the trade name Anvifish Co., Ltd.

[6] This rate is also applicable to QVD Dong Thap Food Co., Ltd. (''Dong Thap'') and Thuan Hung Co., Ltd. (''THUFICO''). In the second review of this order, the Department found QVD Food Company Limited, Dong Thap and THUFICO to be a single entity and, because there have been no changes to this determination since that administrative review, we continue to find these companies to be part of a single entity. Therefore, we will assign this rate to the companies in the single entity. *See Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results of Antidumping Duty Administrative Review,* 71 FR 53387 (September 11, 2006).

[7] The Vietnam-wide rate includes the following companies which are under review, but which did not submit a separate rate application or certification: Nam Viet Company Limited; East Sea Seafoods Joint Venture Co., Ltd.; and Vinh Hoan Company, Ltd.

[8] The rate for the Vietnam-wide entity did not change from the *Final Results.*

[9] *See Anvifish Joint Stock Company* v. *United States,* CIT Court No. 13–00138, dated April 9, 2013; *Vietnam Association of Seafood Exporters and Producers* v. *United States,* CIT Court No. 13–141, dated April 17, 2013; *Binh An Seafood Joint Stock Company* v. *United States,* CIT Court No. 13–155, dated April 23, 2013.

Cash Deposit Requirements

The following cash deposit requirements will be effective retroactively on any entries made after March 21, 2013, the date of publication of the *Final Results,* for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the amended final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in the amended final results of review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed Vietnamese and non-Vietnamese exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all Vietnamese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the Vietnam-wide rate of 2.11 USD/kg; and (4) for all non-Vietnamese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnamese exporters that supplied that non-Vietnamese exporter. The deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

These amended final results are published in accordance with sections 751(h) and 777(i)(1) of the Act.

Dated: May 9, 2013.

Paul Piquado

Assistant Secretary for Import Administration.

[FR Doc. 2013–11965 Filed 5–17–13; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–843, A–570–990, A–549–829]

Prestressed Concrete Steel Rail Tie Wire From Mexico, the People's Republic of China, and Thailand: Initiation of Antidumping Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 20, 2013.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor (Mexico), Brian Smith (the People's Republic of China (the ''PRC'')), or Kate Johnson (Thailand) at (202) 482–4007, (202) 482–1766, or (202) 482–4929, respectively, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On April 23, 2013, the Department of Commerce (the ''Department'') received antidumping duty (''AD'') petitions concerning imports of prestressed concrete steel rail tie wire (''PC tie wire'') from Mexico, the PRC, and Thailand filed in proper form on behalf of Davis Wire Corporation and Insteel Wire Products Company (collectively, the ''petitioners'').[1] The petitioners are domestic producers of PC tie wire. On April 26, 2013, the Department requested additional information and clarification of certain areas of the petitions. The petitioners filed responses to these requests on May 1, 2013.[2]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the ''Act''), the petitioners allege that imports of PC tie wire from Mexico, the PRC, and Thailand 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 petitions are accompanied by information reasonably available to the petitioners supporting their allegations.

The Department finds that the petitioners filed these petitions on behalf of the domestic industry because the petitioners are interested parties as defined in section 771(9)(C) of the Act. The Department also finds that the petitioners have demonstrated sufficient industry support with respect to the initiation of the AD investigations that the petitioners are requesting. *See* the ''Determination of Industry Support for the Petitions'' section below.

Period of Investigation

Because the petitions were filed on April 23, 2013, the period of investigation (''POI'') for the PRC investigation is October 1, 2012, through March 31, 2013. The POI for the Mexico and Thailand investigations is April 1, 2012, through March 31, 2013.[3]

Scope of the Investigations

The product covered by these investigations is PC tie wire from Mexico, the PRC, and Thailand. For a full description of the scope of the investigations, *see* the ''Scope of the Investigations,'' in Appendix I of this notice.

Comments on Scope of Investigations

During our review of the petitions, we discussed the scope with the petitioners to ensure that it is an accurate reflection of the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the 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 Department encourages all interested parties to submit such comments by June 3, 2013, 5:00 p.m. Eastern Standard Time, 20 calendar days from the signature date of this notice. All comments must be filed on the records of the Mexico, the PRC, and

[1] *See* Antidumping Duty Petitions on Prestressed Concrete Steel Rail Tie Wire from the PRC, Mexico, and Thailand, filed on April 23, 2013 (the ''petitions'').

[2] *See* Supplement to the Mexico Petition, dated May 1, 2013 (''Supplement to the Mexico Petition''); Supplement to the PRC Petition, dated May 1, 2013 (''Supplement to the PRC Petition''); and Supplement to the Thailand Petition, dated May 1, 2013 (''Supplement to the Thailand Petition'').

[3] *See* 19 CFR 351.204(b)(1).

Thailand AD investigations. All comments and submissions to the Department must be filed electronically using Import Administration's Antidumping Countervailing Duty Centralized Electronic Service System (''IA ACCESS'').[4] 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 noted above. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with 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.

The period of scope comments 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.

Comments on Product Characteristics for Antidumping Questionnaires

The Department requests comments from interested parties regarding the appropriate physical characteristics of PC tie wire to be reported in response to the Department's AD questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors and costs of production accurately 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 list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics and (2) 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 PC tie wire, 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 matching products. 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 AD questionnaires, we must receive comments on product characteristics by June 3, 2013. Rebuttal comments must be received by June 10, 2013. All comments and submissions to the Department must be filed electronically using IA ACCESS, as referenced above.

Determination of Industry Support for the Petitions

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 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. 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 (*see* 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.[5]

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 petitions).

With regard to the domestic like product, the petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that PC tie wire constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[6]

In determining whether the petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the petitions with reference to the domestic like product as defined in the ''Scope of the Investigations,'' in Appendix I of this notice. To establish industry support, the petitioners provided their own production of the domestic like product in 2012.[7] The petitioners state that there are no other known producers of PC tie wire in the United States; therefore, the petitions

[4] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011) 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%20Filling%20Procedures.pdf.*

[5] *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)).

[6] For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China (''PRC Initiation Checklist'') at Attachment II, Analysis of Industry Support for the Petitions Covering Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China, Mexico, and Thailand (''Attachment II''); Antidumping Duty Investigation Initiation Checklist: Prestressed Concrete Steel Rail Tie Wire from Mexico (''Mexico Initiation Checklist'') at Attachment II; and Antidumping Duty Investigation Initiation Checklist: Prestressed Concrete Steel Rail Tie Wire from Thailand (''Thailand Initiation Checklist''), at Attachment II. These checklists are 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.

[7] *See* the petitions at 2–3 and Exhibit GEN–1.

are supported by 100 percent of the U.S. industry.[8]

Our review of the data provided in the petitions and other information readily available to the Department indicates that the petitioners have established industry support.[9] First, the petitions 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).[10] 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 petitions account for at least 25 percent of the total production of the domestic like product.[11] 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 petitions 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 petitions.[12] Accordingly, the Department determines that the petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that the petitioners filed the petitions on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the AD investigations that they are requesting the Department initiate.[13]

Allegations and Evidence of Material Injury and Causation

The petitioners allege 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, the petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

The petitioners contend that the industry's injured condition is illustrated by reduced market share; increased market penetration; underselling and price depression or suppression; lost sales and revenues; reduced production, shipments, and capacity utilization; reduced employment and production-related workers; and decline in financial performance.[14] 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.[15]

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 investigations of imports of PC tie wire from Mexico, the PRC, and Thailand. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the Mexico Initiation Checklist, PRC Initiation Checklist, and Thailand Initiation Checklist.

Export Price

Mexico

The petitioners calculated an export price (''EP'') based on a price for PC tie wire from Mexico produced by Aceros Camesa S.A. de C.V. (''Camesa''), and sold or offered for sale to a U.S. customer during the POI. To derive the ex-factory price, the petitioners made deductions to U.S. price for U.S. inland freight, inland insurance, U.S. customs fees, foreign inland freight, and foreign brokerage and handling.[16]

Specifically, the petitioners calculated U.S. inland freight based on actual freight rates in Mexico for shipping PC tie wire from the U.S. border to one of Camesa's U.S. customers. The petitioners calculated inland insurance using a publicly-quoted premium for insurance coverage from P.A.F. Cargo Insurance for shipments of steel in sheets, coils, and bars from Mexico to the United States. Although the petitioners initially calculated U.S. customs fees by applying the customs fee percentage to the U.S. price (net of all freight and insurance charges), we disallowed these fees as a deduction to U.S. price because customs duties (specifically, merchandise processing fees) do not apply to the subject merchandise, pursuant to Title II of the North American Free Trade Agreement. The petitioners calculated foreign inland freight based on actual freight rates in Mexico for shipping PC tie wire from Camesa's mill in Mexico to the U.S. border. Finally, the petitioners calculated foreign brokerage and handling expenses using the average brokerage and handling charges for exporting merchandise from Mexico as reported in *Doing Business 2013: Mexico* by the World Bank.

PRC

The petitioners calculated a constructed export price (''CEP'') based on a price for PC tie wire from the PRC produced by Wuxi Jinyang Metal Products Co., Ltd. (''Wuxi Jinyang''), and sold or offered for sale to a U.S. customer during the POI. The petitioners used CEP methodology because the sale or offer for sale was made by Wuxi Jinyang through its affiliated U.S. sales agent, Tata Steel International (America) Inc. To derive the ex-factory price, the petitioners made deductions to U.S. price for U.S. inland freight, U.S. customs fees, ocean freight, marine insurance, foreign brokerage and handling, foreign inland freight, and U.S. indirect selling expenses.[17]

The petitioners calculated U.S. inland freight based on a U.S. freight rate per mile per pound of product shipped using a public source. The petitioners calculated U.S. customs fees (inclusive of harbor maintenance and merchandise processing fees) by applying the customs fee percentage to the U.S. price (net of all freight and insurance charges). The petitioners calculated ocean freight using the average of the freight charges (inclusive of terminal handling charges and bunker charges) obtained from Maersk Line, a major ocean freight carrier, for the first quarter of 2013 for the Shanghai-to-Tacoma, WA ocean route. To be conservative, the petitioners used the maximum capacity usage of the 40-foot container. The petitioners calculated marine insurance charges using a publicly-quoted

[8] *See* the petitions at 2–3 and Exhibits GEN–1, GEN–3, GEN–13, and GEN–14.

[9] *See* PRC Initiation Checklist at Attachment II, Mexico Initiation Checklist at Attachment II, and Thailand Initiation Checklist at Attachment II.

[10] *See* section 732(c)(4)(D) of the Act; *see also* PRC Initiation Checklist at Attachment II, Mexico Initiation Checklist at Attachment II, and Thailand Initiation Checklist at Attachment II.

[11] *See* PRC Initiation Checklist at Attachment II, Mexico Initiation Checklist at Attachment II, and Thailand Initiation Checklist at Attachment II.

[12] *See id.*

[13] *See id.*

[14] *See* the petitions at 45–50 and Exhibits GEN–3 and GEN–7 through GEN–13.

[15] *See* PRC Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China, Mexico, and Thailand (''Attachment III''); Mexico Initiation Checklist at Attachment III; and Thailand Initiation Checklist at Attachment III.

[16] *See* Mexico Initiation Checklist.

[17] *See* PRC Initiation Checklist.

premium for insurance coverage published by P.A.F. Cargo Insurance for shipments of steel sheets, coils and bars from Asia to the United States. The petitioners calculated foreign brokerage and handling and foreign inland freight using average charges (inclusive of document fees, terminal handling and port charges, and customs clearance charges) for exports from the surrogate country Thailand,[18] as published in *Doing Business 2013: Thailand* by the World Bank.

The petitioners deducted a markup for the U.S. indirect selling expenses of Wuxi Jinyang's affiliate. To calculate the U.S. indirect selling expenses, the petitioners relied on the expenses reported in the 2011 Annual Report of STEMCOR, a steel trading company like Wuxi Jinyang's U.S. affiliate, as the financial statements of Wuxi Jinyang's affiliate are not publicly available. To be conservative, the petitioners made no adjustment for U.S. inventory carrying costs.

Thailand

The petitioners calculated CEP based on a price for PC tie wire from Thailand produced by The Siam Industrial Wire Company Ltd. (''SIW''), and sold or offered for sale to a U.S. customer during the POI. The petitioners used CEP methodology because the sale or offer for sale was made by SIW through its affiliated U.S. sales agent, Tata Steel International (America) Inc. To derive the ex-factory price, the petitioners made deductions to U.S. price for foreign inland freight, ocean freight, marine insurance, U.S. customs fees, U.S. inland freight, foreign brokerage and handling charges, and U.S. indirect selling expenses.[19]

The petitioners calculated U.S. inland freight based on a U.S. freight rate per mile per pound of product shipped using a public source. The petitioners calculated ocean freight using the average of the freight charges (inclusive of terminal handling charges and bunker charges) obtained from Maersk Line for the second quarter of 2012 for the ocean route from Thailand to Long Beach/Los Angeles, CA. To be conservative, the petitioners used the maximum capacity usage of the 40-foot container. The petitioners calculated marine insurance using a publicly-quoted premium for insurance coverage published by P.A.F. Cargo Insurance for shipments of steel sheets, coils and bars from Asia to the United States. The petitioners calculated U.S. customs fees (inclusive of harbor maintenance and merchandise processing fees) by applying the customs fee percentage to the U.S. price (net of all freight and insurance charges). The petitioners calculated foreign brokerage and handling and foreign inland freight using average charges (inclusive of document fees, terminal handling and port charges, and customs clearance charges) for exports from Thailand, as published in *Doing Business 2013: Thailand* by the World Bank.

The petitioners deducted a markup for the U.S. indirect selling expenses of SIW's affiliate. To calculate the U.S. indirect selling expenses, the petitioners relied on the expenses reported in the 2011 Annual Report of STEMCOR, a steel trading company like SIW's U.S. affiliate, as the financial statements of SIW's affiliate are not publicly available. To be conservative, the petitioners made no adjustment for U.S. inventory carrying costs.

Normal Value

Mexico

The petitioners based NV on constructed value (''CV''), as neither a home market nor third country price was reasonably available. The petitioners relied on their own 2012 production costs for PC tie wire, adjusting for known differences between the Mexican and U.S. industries.[20]

The petitioners calculated cost of manufacturing (''COM'') based on their consumption of raw material inputs, labor and energy, valued at the input cost in the Mexican market. Where it was necessary to rely on data from a period preceding the POI, in accordance with Department practice, the petitioners inflated such values to reflect current prices using the consumer price inflation index (''CPI'') data for Mexico published by the International Monetary Fund (''IMF'').

The petitioners based direct material costs on the average Mexican FOB import value of high-carbon wire rod obtained from Global Trade Atlas (''GTA'') for the period February 2012 through January 2013. The petitioners excluded all import values from all countries either previously determined by the Department to maintain broadly available, non-industry-specific export subsidies and/or from countries previously determined by the Department to be non-market economy (''NME'') countries. In addition, in accordance with the Department's practice, the import statistics average unit value excludes imports that were labeled as originating from an unspecified country. To calculate a delivered price to Camesa's plant in Mexico, the petitioners added average Mexican brokerage and inland freight charges, as reported in *Doing Business 2013: Mexico* published by the World Bank.

For the other materials used to produce the subject merchandise (including packing materials), which the petitioners stated are minor, the petitioners used their own costs to value these materials.

To value electricity and gas costs, the petitioners used information on 2011 electricity and gas costs in Mexico published by the International Energy Agency.

The petitioners calculated labor using a 2008 Mexican wage rate from LABORSTA, a labor database compiled by the International Labor Organization (''ILO''), and adjusted this rate for inflation.

The petitioners calculated financial ratios (*i.e.,* manufacturing overhead; selling, general, and administrative (''SG&A''); and profit) using information in the 2011 financial statement of Altos Hornos De Mexico, a Mexican producer of carbon steel flat products, because no financial statements for a Mexican producer of PC tie wire were publicly available.

PRC

The petitioners state that the Department has long treated the PRC as a NME country and that this designation remains in effect today. 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 this investigation. Accordingly, the NV of the product is appropriately based on factors of production valued in a surrogate market-economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties, including the public, will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

The petitioners contend that Thailand is the appropriate surrogate country for the PRC because: (1) It is at a level of economic development comparable to that of the PRC; (2) it is a significant producer of identical merchandise; and (3) the availability and quality of data are good. Based on the information provided by the petitioners, we believe that it is appropriate to use Thailand as

[18] *See* ''Normal Value'' section below for further discussion of the selection of the surrogate country.

[19] *See* Thailand Initiation Checklist.

[20] *See* Mexico Initiation Checklist.

a surrogate country for initiation purposes. After initiation 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 factors of production within 30 days before the scheduled date of the preliminary determination.

The petitioners calculated NV based on their own 2012 consumption rates. The petitioners assert that, to the best of their knowledge, their consumption rates are similar to the consumption of PRC producers.[21]

The petitioners valued the factors of production for high carbon wire rod (*i.e.,* the main material used to produce PC tie wire) using publicly available Thai import data obtained from the GTA for the period October 2012 through March 2013. The petitioners excluded all import values from all countries either previously determined by the Department to maintain broadly available, non-industry-specific export subsidies and/or from countries previously determined by the Department to be NME countries. In addition, in accordance with the Department's practice, the import statistics average unit value excludes imports that were labeled as originating from an unspecified country. The petitioners added to the Thai import value the average Thai brokerage and inland freight charges reported for importing goods into Thailand, as reported in *Doing Business 2013: Thailand* published by the World Bank.

For the other materials used to produce the subject merchandise (including packing materials), which the petitioners stated are minor, the petitioners used their own costs to value these materials.

The petitioners calculated labor using a 2005 Thai wage rate from LABORSTA, a labor database compiled by the ILO, and adjusted this rate for inflation using the CPI data for Thailand published by the IMF.

The petitioners valued electricity using a 2011 Thai industry electricity rate reported by the Electricity Generating Authority of Thailand.

The petitioners valued natural gas using publicly available Thai data for imports of liquid natural gas obtained from GTA for the period October 2012 through February 2013, and universal conversion factors published by Chemlink Pty Ltd.

The petitioners calculated financial ratios (*i.e.,* manufacturing overhead, SG&A, and profit) using information in the 2011 and 2012 financial statements of SIW.

Thailand

The petitioners based NV on CV, as neither a home market nor a third country price was reasonably available. The petitioners relied on their own 2012 production costs for PC tie wire, adjusting for known differences between the Thai and U.S. industries.[22]

The petitioners calculated COM based on their consumption of raw material inputs, labor and energy, valued at the input cost in the Thai market. Where it was necessary to rely on data from a period preceding the POI, in accordance with Department practice, the petitioners inflated such values to reflect current prices using the CPI data for Thailand published by the IMF.

The petitioners based direct material costs on the average Thai CIF import value of high-carbon wire rod obtained from GTA for the period April 2012 through March 2013. The petitioners excluded all import values from all countries either previously determined by the Department to maintain broadly available, non-industry-specific export subsidies and/or from countries previously determined by the Department to be NME countries. In addition, in accordance with the Department's practice, the import statistics average unit value excludes imports that were labeled as originating from an unspecified country. To calculate a delivered price to SIW's plant in Thailand, the petitioners added average Thai brokerage and inland freight charges, as reported in *Doing Business 2013: Thailand* published by the World Bank.

For the other materials used to produce the subject merchandise (including packing materials), which the petitioners stated are minor, the petitioners used their own costs to value these materials.

The petitioners used public information to value electricity and natural gas costs for a Thai producer. With respect to electricity, the petitioners used a 2011 electricity rate as reported by the Electricity Generating Authority of Thailand. The petitioners calculated natural gas costs using the average unit value of imports of liquid natural gas obtained from GTA for the period April 2012 through March 2013, and universal conversion factors published by Chemlink Pty Ltd.

The petitioners calculated labor using a 2005 Thai wage rate from LABORSTA, a labor database compiled by the ILO, and adjusted this rate for inflation.

The petitioners calculated financial ratios (*i.e.,* manufacturing overhead, SG&A, and profit) using information in the 2011 and 2012 financial statements of SIW.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of PC tie wire from Mexico, the PRC, and Thailand are being, or are likely to be, sold in the United States at less than fair value. Based on comparisons of EP to CV in accordance with section 773(a)(4) of the Act, the estimated dumping margin for PC tie wire from Mexico, as revised by the Department, is 159.44 percent.[23] Based on comparisons of CEP to NV in accordance with section 773(c) of the Act, the estimated dumping margin for PC tie wire from the PRC is 67.43 percent.[24] Based on comparisons of CEP to CV in accordance with section 773(a)(4) of the Act, the estimated dumping margin for PC tie wire from Thailand is 53.72 percent.[25]

Initiation of Antidumping Investigations

Based upon the examination of the petitions on PC tie wire from Mexico, the PRC, and Thailand, we find that the petitions meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of PC tie wire from Mexico, the PRC, and Thailand 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.

Respondent Selection

Although the Department normally relies on import data from U.S. Customs and Border Protection to select a limited number of exporters/producers for individual examination in AD investigations, these petitions name only one company as a producer and/or exporter of PC tie wire in Mexico—Camesa; one company as a producer and/or exporter of PC tie wire in Thailand—SIW; and three companies as producers/exporters of PC tie wire in the PRC—Silvery Dragon Group and

[21] *See* PRC Initiation Checklist.

[22] *See* Thailand Initiation Checklist.

[23] *See* Mexico Initiation Checklist.

[24] *See* PRC Initiation Checklist.

[25] *See* Thailand Initiation Checklist.

Technology (''Silvery Dragon''), Wuxi Jinyang, and Shanxi New-Mile International Trade Co., Ltd. (''Shanxi New-Mile'').[26] Furthermore, we currently know of no additional exporters or producers of subject merchandise from these countries. Accordingly, the Department intends to examine all known exporters/producers in these investigations, *i.e.,* Camesa in the Mexico investigation; SIW in the Thai investigation; and Silvery Dragon, Wuxi Jinyang, and Shanxi New-Mile in the PRC investigation.

We will consider comments from interested parties on this issue. Parties wishing to comment must do so within five days of the publication of this notice in the **Federal Register**.

Separate Rates

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate status application.[27] The specific requirements for submitting the separate-rate application in the PRC 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 have been 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. The Department requires that the PRC respondents submit a response to the separate-rate application by the deadline in order to receive consideration for separate-rate status.

Use of Combination Rates

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in an NME 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.[28]

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the petitions have been provided to the Governments of Mexico, the PRC, and Thailand via IA ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the petitions to each exporter named in the petitions, as provided under 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 Determinations by the ITC

The ITC will preliminarily determine no later than June 7, 2013, whether there is a reasonable indication that imports of PC tie wire from Mexico, the PRC, and Thailand are materially injuring or threatening material injury to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

On April 10, 2013, the Department published *Definition of Factual Information and Time Limits for Submission of Factual Information: Final Rule,* 78 FR 21246 (April 10, 2013), which modified two regulations related to AD and countervailing duty (''CVD'') proceedings: the definition of factual information (19 CFR 351.102(b)(21)), and the time limits for the submission of factual information (19 CFR 351.301). The final rule identifies five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i)–(iv). The final rule requires any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The final rule also modified 19 CFR 351.301 so that, rather than providing general time limits, there are specific time limits based on the type of factual information being submitted. These modifications are effective for all proceeding segments initiated on or after May 10, 2013, and thus are applicable to these investigations. Please review the final rule, available at *http://ia.ita.doc.gov/frn/2013/1304frn/2013-08227.txt*, prior to submitting factual information in these investigations.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective order 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 (Jan. 22, 2008). Parties wishing to participate in these investigations 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.[29] 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 proceedings initiated on or after March 14, 2011.[30]

[26] *See* the petitions at 8–9.

[27] *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.*

[28] *See* Separate Rates and Combination Rates Bulletin at 6 (emphasis added).

[29] *See* section 782(b) of the Act.

[30] *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) and supplemented by *Certification of Factual*

The formats for the revised certifications are provided at the end of the *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: May 13, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I—Scope of the Investigations

The product covered by these investigations is high carbon steel wire; stress relieved or low relaxation; indented or otherwise deformed; meeting at a minimum the American Society for Testing Materials (ASTM) A881/A881M specification; regardless of shape, size, or other alloy element levels; suitable for use as prestressed tendons in concrete railroad ties (''PC tie wire''). High carbon steel is defined as steel that contains 0.6 percent or more of carbon by weight.

PC tie wire is classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 7217.10.8045, but may also be classified under subheadings 7217.10.7000, 7217.10.8025, 7217.10.8030, 7217.10.9000, 7229.90.1000, 7229.90.5016, 7229.90.5031, 7229.90.5051, and 7229.90.9000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigations is dispositive.

[FR Doc. 2013–11970 Filed 5–17–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Western Alaska Community Development Quota Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 19, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden (907) 586–7008 or *patsy.bearden@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection.

The Western Alaska Community Development Quota (CDQ) Program is an economic development program implemented under the Magnuson Stevens Fishery Conservation and Management Act, the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands, and regulations at 50 CFR part 679. The purpose of the program is to provide western Alaska communities the opportunity to participate and invest in Bering Sea and Aleutian Islands Management Area fisheries, to support economic development in western Alaska, to alleviate poverty and provide economic and social benefits for residents of western Alaska, and to achieve sustainable and diversified local economies in western Alaska.

CDQ and prohibited species quota (PSQ) allocations are made to CDQ groups. However, in many cases the CDQ groups contract with existing fishing vessels and processors to harvest CDQ on their behalf. The CDQ group is responsible to monitor the catch of CDQ and PSQ by all vessels fishing under its Community Development Plan and to take the necessary action to prevent overages. National Marine Fisheries Service monitors the reported catch to assure that quotas are not being exceeded. Information is collected only through quota transfers in this collection.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include email of electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0269.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 6.

Estimated Time per Response: 30 minutes for Non-Chinook CDQ/PSQ Transfer Request; 5 hours for Application for approval of use of non-CDQ harvest regulations.

Estimated Total Annual Burden Hours: 11.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 15, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–11951 Filed 5–17–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC689

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Horseshoe Crabs; Application for Exempted Fishing Permit, 2013

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

ACTION: Notification of a proposal to conduct exempted fishing; request for comments.

Information To Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule, 76 FR 54697 (September 2, 2011).

SUMMARY: The Deputy Director, Office of Sustainable Fisheries, has made a preliminary determination that the subject exempted fishing permit (EFP) application submitted by Limuli Laboratories of Cape May Court House, NJ, contains all the required information and warrants further consideration. The proposed EFP would allow the harvest of up to 10,000 horseshoe crabs from the Carl N. Shuster Jr. Horseshoe Crab Reserve (Reserve) for biomedical purposes and require, as a condition of the EFP, the collection of data related to the status of horseshoe crabs within the reserve. The Deputy Director has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Atlantic States Marine Fisheries Commission's (Commission) Horseshoe Crab Interstate Fisheries Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Deputy Director proposes to recommend that an EFP be issued that would allow up to two commercial fishing vessels to conduct fishing operations that are otherwise restricted by the regulations promulgated under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act). The EFP would allow for an exemption from the Reserve.

Regulations under the Atlantic Coastal Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Written comments on this action must be received on or before June 4, 2013.

ADDRESSES: Written comments should be sent to Emily Menashes, Deputy Director, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Room 13362, Silver Spring, MD 20910. Mark the outside of the envelope ''Comments on Horseshoe Crab EFP Proposal.'' Comments may also be sent via fax to (301) 713–0596. Comments on this notice may also be submitted by email to: *derek.orner@noaa.gov*. Include in the subject line of the email comment the following document identifier: ''Horseshoe Crab EFP Proposal Comments.''

FOR FURTHER INFORMATION CONTACT: Derek Orner, Office of Sustainable Fisheries, (301) 427–8567.

SUPPLEMENTARY INFORMATION:

Background

Limuli Laboratories submitted an application for an EFP dated January 9, 2013, to collect up to 10,000 horseshoe crabs for biomedical and data collection purposes from the Reserve. The applicant has applied for, and received, a similar EFP every year from 2001–2012. The current EFP application specifies that: (1) The same methods would be used in 2013 that were used in years 2001–2012, (2) at least 15 percent of the bled horseshoe crabs would be tagged, and (3) there had not been any sighting or capture of marine mammals or endangered species in the trawling nets of fishing vessels engaged in the collection of horseshoe crabs since 1993. The project submitted by Limuli Laboratories would provide morphological data on horseshoe crab catch, would tag a portion of the caught horseshoe crabs, and would use the blood from the caught horseshoe crabs to manufacture Limulus Amebocyte Lysate (LAL), an important health and safety product used for the detection of endotoxins. The LAL assay is used by medical professionals, drug companies, and pharmacies to detect endotoxins in intravenous pharmaceuticals and medical devices that come into contact with human blood or spinal fluid.

Result of 2012 EFP

No horseshoe crabs were collected from the Reserve by the applicant during the 2012 season. Thus, no results were submitted. The last year in which the applicant actually collected horseshoe crabs authorized under an EFP was 2011. Results from 2011 were published in the **Federal Register** on September 10, 2012 (77 FR 55457), and thus are not repeated here. Data collected under previous EFPs were supplied to NMFS, the Commission and the State of New Jersey.

Proposed 2013 EFP

Limuli Laboratories proposes to conduct an exempted fishery operation using the same means, methods, and seasons proposed/utilized during the EFPs in 2001–2012. Limuli proposes to continue to tag at least 15 percent of the bled horseshoe crabs as they did in 2011. NMFS would require that the following terms and conditions be met for issuance and continuation of the EFP for 2013:

1. Limiting the number of horseshoe crabs collected in the Reserve to no more than 500 crabs per day and to a total of no more than 10,000 crabs per year;

2. Requiring collections to take place over a total of approximately 20 days during the months of July, August, September, October, and November. (Horseshoe crabs are readily available in harvestable concentrations nearshore earlier in the year, and offshore in the Reserve from July through November.);

3. Requiring that a 5½ inch (14.0 cm) flounder net be used by the vessel to collect the horseshoe crabs. This condition would allow for continuation of traditional harvest gear and adds to the consistency in the way horseshoe crabs are harvested for data collection;

4. Limiting trawl tow times to 30 minutes as a conservation measure to protect sea turtles, which are expected to be migrating through the area during the collection period, and are vulnerable to bottom trawling;

5. Requiring that the collected horseshoe crabs be picked up from the fishing vessels at docks in the Cape May Area and transported to local laboratories, bled for LAL, and released alive the following morning into the Lower Delaware Bay; and

6. Requiring that any turtle take be reported to NMFS, Northeast Region, Assistant Regional Administrator of Protected Resources Division, within 24 hours of returning from the trip in which the incidental take occurred.

As part of the terms and conditions of the EFP, for all horseshoe crabs bled for LAL, NMFS would require that the EFP holder provide data on sex ratio and daily harvest. Also, the EFP holder would be required to examine at least 200 horseshoe crabs for morphometric data. Terms and conditions may be added or amended prior to the issuance of the EFP.

The proposed EFP would exempt two commercial vessels from regulations at 50 CFR 697.7(e) and 697.23(f), which prohibit the harvest and possession of horseshoe crabs from the Reserve on a vessel with a trawl or dredge gear aboard.

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

Dated: May 15, 2013.

Kara Meckley,

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

[FR Doc. 2013–11954 Filed 5–17–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC691

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Regional Fishery Management Council's (Council) will convene meetings of its Hawaii, American Samoa, Guam and Commonwealth of the Mariana Islands (CNMI) Archipelagic Advisory Panels (APs) and the Hawaii Regional Ecosystem Advisory Committee (REAC) (see **SUPPLEMENTARY INFORMATION** for specific times, dates, and agenda items).

DATES: The Guam AP will be held on June 3, 2013, from 6 p.m.–10 p.m. The American Samoa AP will be held on June 5, 2013 from 2 p.m. to 6 p.m. The CNMI AP will be held on June 5, 2013 from 10 p.m.–5 p.m. The Hawaii AP will be held on June 13, 2013 from 9 a.m.–2 p.m. The Hawaii REAC will be held on June 12, 2013, from 9 a.m. to 4 p.m.

ADDRESSES: The Guam AP meeting will be held at the Guam Fishermen's Cooperative, Greg D. Perez Marina, Hagatna Boat Basin, Guam, phone: (671) 472–6323. The American Samoa AP will be held at Toa's Bar and Grill Conference Room, Lions Park Road Nu'uuli Village, American Samoa, phone: (684) 699–2901. The CNMI AP will be held at the Conference Room, Department of Lands and Natural Resources Lower Base Drive, Saipan, CNMI, phone: (670) 664–6000. The Hawaii AP and the Hawaii REAC meetings will be held at the Western Pacific Regional Fishery Management Council office, 1164 Bishop Street, Suite 1400, Honolulu, HI, phone (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION:

Agenda for Guam AP, June 3, 2013, 6 p.m.–10 p.m.

1. Welcome and introduction
2. Update on previous AP recommendations
3. Update on Roles and Responsibilities of AP
3. Review of Council Issues
A. Pelagic and International fisheries
B. Insular Fisheries
C. Protected Species
D. Annual Catch Limits
E. Fishery Community Engagement
4. Guam AP issues
5. Discussion and AP Recommendations to Council

Agenda for American Samoa AP, June 5, 2013, 2 p.m.–6 p.m.

1. Welcome and introduction
2. Update on previous AP recommendations
3. Update on Roles and Responsibilities of AP
4. Annual Catch Limits
5. Update on AS Fishermen Database
6. Revision of American Samoa longline swordfish catch limit
7. Review of minimum 100 m hook depth for American Samoa longline fishery
8. Dock issues in Pago Pago Harbor
9. Incentive program for local fishermen to promote fishing and provision of catch data
10. Equipment store at the Fagatogo Marketplace
11. Fishing issues at Aunu'u with new Sanctuary regulations
12. Potential training opportunities for AP Members
13. Potential funding sources to assist local small fishing boat owners
14. AP outreach out to Manu'a fishermen
15. Discussion and AP Recommendations to Council

Agenda for CNMI AP, June 7, 2013, 1 p.m.–5 p.m.

1. Welcome and introduction
2. Election of Chairman
3. Advisory Panel Duties
4. Department of Defense Training Proposals
5. Proposed Fisheries Legislations
6. Update on CNMI Fisheries Review Committee
7. Update on CNMI Bio-sampling Program
8. Status of Endangered Species Act (ESA) Listings
9. Marine Conservation Plan Updates
10. Fisheries Development Projects
11. Upcoming Council Actions and Annual Catch Limits
12. Other Business
13. Public Comment
14. Discussion and AP Recommendations to Council

Hawaii AP Agenda, June 13, 2013, 9 a.m.–2 p.m.

1. Welcome and introduction
2. Update on previous AP recommendations
3. Update on Roles and Responsibilities of AP
3. Review of Council Issues
A. Pelagic and International fisheries
B. Insular Fisheries
C. Protected Species
D. Annual Catch Limits
E. Fishery Community Engagement
4. Hawaii AP issues
5. Discussion and AP Recommendations to Council

Hawaii REAC agenda, June 12, 2013, 9 a.m.–4 p.m.

1. Welcome and introduction
2. Approval of Agenda
3. Update on REAC 2012 Recommendations and activities
4. Assessing Ecosystem Effects in Climate Change
A. Effects of sea-level rise on Hawaii Coastal Communities
B. Ocean acidification
C. Climate change impacts on marine ecosystems
D. Understanding potential impacts to Hawaii Fisheries
i. Offshore fisheries
ii. Coastal fisheries
5. Break
6. Agency Perspectives on climate change and cultural resource adaptation
7. Management planning for Climate Change Impact
8. Discussion and Recommendations
9. Public Comment
10. Other Business
11. Recommendations

Although non-emergency issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: May 15, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–11966 Filed 5–17–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0051]

Proposed Collection; Comment Request

AGENCY: Defense Prisoner of War/Missing Personnel Office, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Defense Prisoner of War/Missing Personnel Office announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 19, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 2nd Floor, East Tower, Suite 02G09, Mark Center Drive, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Prisoner of War/Missing Personnel Office (DPMO), ATTN: Roland Tisdale, 2000 Defense Pentagon, Washington, DC 20301–2000, or call, Roland Tisdale at (703) 699–1168.

Title; Associated Form; and OMB Number: DPMO Family Update Registration; Family Update Registration Form; OMB Control Number 0704–TBD.

Needs and Uses: The information collection requirement is necessary to provide information to family members concerning DPMO progress on missing DoD personnel. Data is used to produce studies and analytical reports furnished as background material to offices and agencies that enunciate and promulgate national policy. The form is optional and used to keep an accurate record of family members who attend family updates; including home addresses, phone numbers or other contact information of the primary next-of-kin, family members, or private citizens who may request information on a missing American or may have information which will help identify remains.

Affected Public: Individuals or Households.

Annual Burden Hours: 54.75 hours.

Number of Respondents: 657.

Responses per Respondent: 1.

Average Burden per Response: 5 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are primary next-of-kin or family members who may request information on a missing American or may have information which will help identify remains. The Family Update Registration Form records address, phone number, email address, relationship to the missing American, and the service/war of the missing. The completed form is kept and used to send out invitations to upcoming Family Updates, ''Thank you'' letters, and other correspondence associated with the primary next-of-kin and/or family members. In addition, data are used to produce studies and analytical reports furnished as background material to offices and agencies. The completion of this form is optional, yet essential in maintaining accurate records so that DoD may keep families informed of the efforts being made to account for their loved ones.

Dated: May 15, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–11905 Filed 5–17–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Threat Reduction Advisory Committee; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Under Secretary of Defense (Acquisition, Technology and Logistics), Department of Defense.

ACTION: Federal Advisory Committee Meeting Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C., Appendix, as amended) and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) the Department of Defense announces the following Federal advisory committee meeting of the Threat Reduction Advisory Committee (''the Committee'').

DATES: Wednesday, June 12, from 9:00 a.m. to 5:00 p.m. and Thursday, June 13, 2013, from 8:45 a.m. to 2:00 p.m.

ADDRESSES: Commander's Conference Room, USNORTHCOM, Colorado Springs, CO.

FOR FURTHER INFORMATION CONTACT: Mr. William Hostyn, DoD, Defense Threat Reduction Agency/J2/5/8R–ACP, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060–6201. Email: *william.hostyn@dtra.mil.* Phone: (703) 767–4453. Fax: (703) 767–4206.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To obtain, review and evaluate classified information related to the Committee's mission to advise on technology security, Combating Weapons of Mass Destruction (C–WMD), counter terrorism and counter proliferation.

Agenda: Beginning at 9:00 a.m. on June 12, and through the end of the meeting on June 13, the committee will receive classified Combating Weapons of Mass Destruction (C–WMD) briefings from the Department of Defense. The committee will also hold classified discussions on USNORTHCOM C–WMD concerns, Defense Support to Civil Authorities, the Colorado National Guard Bureau State Partnership Program, the Cooperative Threat Reduction program, and C–WMD Strategic Indicators and Warnings.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. The Under Secretary of Defense for Acquisition, Technology and Logistics, in consultation with the DoD FACA Attorney, has determined in writing that the public interest requires all sessions of this meeting be closed to the public because the discussions will be concerned with classified information and matters covered by 5 U.S.C. 552b(c)(1) and are inextricably intertwined with the unclassified material which cannot reasonably be segregated into separate discussions without disclosing secret material.

Committee's Designated Federal Officer or Point of Contact: Mr. William Hostyn, DoD, Defense Threat Reduction Agency/J/2/5/8R–ACP, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060–6201. Email:

william.hostyn@dtra.mil. Phone: (703) 767–4453. Fax: (703) 767–4206.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of FACA, the public or interested organizations may submit written statements to the membership of the Committee at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Committee's Designated Federal Officer. The Designated Federal Officer's contact information is listed in this notice or it can be obtained from the General Services Administration's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to a scheduled meeting of the Committee may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all committee members.

Dated: May 15, 2013.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2013–11912 Filed 5–17–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Science and Technology Reinvention Laboratory (STRL) Personnel Management Demonstration Projects

AGENCY: Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) (DASD (CPP)), Department of Defense (DoD).

ACTION: Notice of amendment to demonstration project plans.

SUMMARY: Section 342(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 1995, as amended by section 1009 of the NDAA for FY 2000, and section 1114 of the NDAA for FY 2001, authorizes the Secretary of Defense to conduct personnel demonstration projects at DoD laboratories designated as STRLs. This amendment adds waivers to current STRL *Federal Register Notices* (FRN) for the Army Research Laboratory (ARL); the Army Aviation and Missile Research, Development, and Engineering Center (AMRDEC); the Army Engineer Research and Development Center (ERDC); the Army Medical Research and Materiel Command (MRMC); the Army Communications-Electronics Research, Development, and Engineering Center (CERDEC); and the Naval Research Laboratory (NRL), to facilitate the use of flexibilities in their project plans by permitting terminations during extended probationary periods. On November 20, 2012, the proposed amendment was published for a 30-day comment period. No comments were received on or before December 20, 2012. This notice provides the final amendment to the demonstration project plans.

DATES: This amendment may be implemented beginning on the date of publication.

FOR FURTHER INFORMATION CONTACT:

Department of Defense

Mr. William T. Cole, Defense Civilian Personnel Advisory Service, Non-Traditional Personnel Programs (DCPAS–NTPP), Suite 05L28, 4800 Mark Center Drive, Alexandria, VA 22350–1100; email: *william.cole@cpms.osd.mil.*

Department of the Army

- ARL: Program Manager, ARL Personnel Demonstration Project, AMSRD–ARL–O–HR, 2800 Powder Mill Road, Adelphi, MD 20793–1197;
- AMRDEC: Special Assistant for Laboratory Management, AMRDEC, 5400 Fowler Road, Redstone Arsenal, AL 35898–5000;
- ERDC: Personnel Demonstration Project Manager, U.S. Army Engineer Research and Development Center, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199;
- MRMC: Director, Civilian Personnel Advisory Center, Medical Research and Materiel Command, 1541 Porter Street, Fort Detrick, MD 21702–5000;
- CERDEC: CERDEC Personnel Demonstration Project Administrator, C4ISR Campus Building 6002, Room D3120, ATTN: RDER–DOS–ER, Aberdeen Proving Ground, MD 21005.

Department of the Navy

- NRL: Director, Strategic Workforce Planning, Naval Research Laboratory, 4555 Overlook Avenue SW., Washington, DC 20375–5320.

SUPPLEMENTARY INFORMATION:

A. Background

The conventional 1-year probationary period does not allow supervisors an adequate period of time to fully evaluate the contribution and conduct of newly hired personnel. STRLs have included flexibilities allowing up to a 3 year probationary period. These flexibilities were fully utilized until the United States Court of Appeals for the Federal Circuit decided two cases, *Van Wersch* v. *Department of Health & Human Services,* 197 F.3d 1144 (Fed. Cir. 1999), and *McCormick* v. *Department of the Air Force,* 307 F.3d 1339 (Fed. Cir. 2002), which affected the STRL's ability to fully utilize their extended probationary periods.

B. Modifications

The following FRNs are amended under the authority of section 1114 of the NDAA for Fiscal Year 2001:

1. ARL (63 FR 10680–10711, March 4, 1998)

a. Add the following to section IX. Required Waivers to Law and Regulation, *A. Waivers to Title 5, U. S. Code:* ''Chapter 75, sections 7501(1), 7511(a)(1)(A)(ii), and 7511(a)(1)(C)(ii); Adverse Actions—Definitions. Waived to the extent necessary to allow extended probationary periods and to permit termination during the extended probationary period without using adverse action procedures for those individuals serving a probationary period under an initial appointment except for those with veterans' preference.''

b. Add the following as the final paragraph to section IX. Required Waivers to Law and Regulation, *B. Waivers to Title 5, Code of Federal Regulations:* ''Part 752, sections 752.201, and 752.401: Coverage. Waived to the extent necessary to allow extended probationary periods and to permit termination during the extended probationary period without using adverse action procedures for those individuals serving a probationary period under an initial appointment except those with veterans' preference.''

2. AMRDEC (62 FR 34876–34903, June 27, 1997)

a. Add the following to section IX. Required Waivers to Law and Regulation, *1. Title 5, U.S. Code:* ''Chapter 75, sections 7501(1), 7511(a)(1)(A)(ii), and 7511(a)(1)(C)(ii); Adverse Actions—Definitions. Waived to the extent necessary to allow extended probationary periods and to permit termination during the extended probationary period without using adverse action procedures for those individuals serving a probationary period under an initial appointment except for those with veterans' preference.''

b. Add the following as the final paragraph to section IX. Required Waivers to Law and Regulation, *2. Title 5, Code of Federal Regulations:* ''Part 752, sections 752.201, and 752.401: Coverage. Waived to the extent necessary to allow extended probationary periods and to permit termination during the extended probationary period without using adverse action procedures for those individuals serving a probationary period under an initial appointment except those with veterans' preference.''

3. ERDC (63 FR 14580–14599, March 25, 1998)

a. Add the following to section IX. Required Waivers to Law and Regulation, *A. Waivers to Title 5, U.S. Code:* ''Chapter 75, sections 7501(1), 7511(a)(1)(A)(ii), and 7511(a)(1)(C)(ii); Adverse Actions—Definitions. Waived to the extent necessary to allow extended probationary periods and to permit termination during the extended probationary period without using adverse action procedures for those individuals serving a probationary period under an initial appointment except for those with veterans' preference.''

b. Add the following to section IX. Required Waivers to Law and Regulation, *B. Waivers to Title 5, Code of Federal Regulations:* ''Part 752, sections 752.201, and 752.401: Coverage. Waived to the extent necessary to allow extended probationary periods and to permit termination during the extended probationary period without using adverse action procedures for those individuals serving a probationary period under an initial appointment except those with veterans' preference.''

4. MRMC (63 FR 10440–10462, March 3, 1998)

a. Add the following to section IX. Required Waivers to Law and Regulation, *1. Waivers to Title 5, U.S. Code:* ''Chapter 75, sections 7501(1), 7511(a)(1)(A)(ii), and 7511(a)(1)(C)(ii); Adverse Actions—Definitions. Waived to the extent necessary to allow extended probationary periods and to permit termination during the extended probationary period without using adverse action procedures for those individuals serving a probationary period under an initial appointment except for those with veterans' preference.''

b. Add the following as the final paragraph to section IX. Required Waivers to Law and Regulation, *2. Title 5, Code of Federal Regulations:* ''Part 752, sections 752.201, and 752.401: Coverage. Waived to the extent necessary to allow extended probationary periods and to permit termination during the extended probationary period without using adverse action procedures for those individuals serving a probationary period under an initial appointment except those with veterans' preference.''

5. CERDEC (66 FR 54872–54899, October 30, 2001)

a. Add the following to section IX. Required Waivers to Law and Regulation, *A. Waivers to Title 5, U.S. Code:* ''Chapter 75, sections 7501(1), 7511(a)(1)(A)(ii), and 7511(a)(1)(C)(ii); Adverse Actions—Definitions. Waived to the extent necessary to allow extended probationary periods and to permit termination during the extended probationary period without using adverse action procedures for those individuals serving a probationary period under an initial appointment except for those with veterans' preference.''

b. Add the following to section IX. Required Waivers to Law and Regulation, *B. Waivers to Title 5, Code of Federal Regulations:* ''Part 752, sections 752.201, and 752.401: Coverage. Waived to the extent necessary to allow extended probationary periods and to permit termination during the extended probationary period without using adverse action procedures for those individuals serving a probationary period under an initial appointment except those with veterans' preference.''

6. NRL (64 FR 33970–34046, June 24, 1999)

a. Add the following as the final box on the left side of Appendix A: Required Waivers to Law and Regulation chart, *Title 5, U. S. Code:* ''Chapter 75, sections 7501(1), 7511(a)(1)(A)(ii), and 7511(a)(1)(C)(ii); Adverse Actions—Definitions. Waived to the extent necessary to allow extended probationary periods and to permit termination during the extended probationary period without using adverse action procedures for those individuals serving a probationary period under an initial appointment except for those with veterans' preference.''

b. Add the following on the right side of the information entered in 6.a. above to Appendix A: Required Waivers to Law and Regulation chart, *Title 5, Code of Federal Regulations:* ''Part 752, sections 752.201, and 752.401: Coverage. Waived to the extent necessary to allow extended probationary periods and to permit termination during the extended probationary period without using adverse action procedures for those individuals serving a probationary period under an initial appointment except those with veterans' preference.''

Dated: May 15, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–11952 Filed 5–17–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement for Arctic Deep Draft Ports Navigation Improvements Feasibility Study

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE) announces its intention to prepare an Environmental Impact Statement (EIS) to study the feasibility of improving the navigation infrastructure in the vicinity of Norton Sound and the Bering Strait with a focus on existing infrastructure at Nome, possible infrastructure at Cape Riley near Teller, and improved infrastructure at Point Spencer at Port Clarence, Alaska. This study will be performed through a partnership between USACE and the State of Alaska, Department of Transportation. The existing infrastructure in this region of Alaska is presently not capable of meeting existing or anticipated navigation demands for multinational, Federal, state, and local interests. Of particular concern in this region is the ability to provide a systematic approach to meeting navigation requirements in this region in response to a changing climate and thus an increasing need for environmentally and responsibly planned infrastructure. The EIS will address the potential for positive and negative environmental impacts of construction, operation, and maintenance of marine infrastructure serving the Norton Sound and Bering Strait region. USACE will hold scoping meetings in Nome and Teller, Alaska, in an effort to better define the issues associated with navigation in this region of Alaska. Teleconferencing or VTC will be set up as available to accommodate stakeholders unable to be present at the scoping meetings. Scoping will be

ongoing throughout the feasibility study process.

DATES: A scoping meeting will be held in Nome and Teller, Alaska the second week in June. A summary of comments received as a result of scoping meetings held in June will be forwarded to participants as requested. Scoping meetings will be advertised in local newspapers as necessary.

ADDRESSES: Please direct comments or suggestions on the scope of the EIS to: Mr. Michael Salyer, NEPA Coordinator, U.S. Army Corps of Engineers, Alaska District, EN–G–ER, P.O. Box 6898, Joint Base Elmendorf-Richardson, AK 99506–0898; Phone: 907–753–2690; Fax: (907) 753–2625, email *michael.9.salyer@usace.army.mil* (please use ''NOI Comments; Environmental Impact Statement for Arctic Deep Draft Ports Navigation Improvements Feasibility Study).

FOR FURTHER INFORMATION CONTACT: For information or questions concerning the proposed project, contact: Ms. Lorraine Cordova, Plan Formulator, U.S. Army Corps of Engineers, Alaska District, PM–C–PL, P.O. Box 6898, Joint Base Elmendorf-Richardson, AK 99506–0898; Phone: 907–753–5619; Fax: (907) 753–2625; email: *Lorraine.A.Cordova@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

Background

The study area is part of the Seward Peninsula on the western coast of Alaska and includes the general area of Nome/Port Clarence and Teller. Currently, Nome serves as the supply, service, and transportation center for the Bering Strait region. Nome cannot meet the existing demand for maritime infrastructure, while demand on that infrastructure continues to increase. Commerce, safety, national security and oil spill response capability have already been identified as issues needing to be addressed in the United States as an Arctic nation.

Purpose and Need for Agency Action

The purpose of this study is to identify a practicable and environmentally responsible solution to meeting the existing and future maritime infrastructure needs in the Bering Sea Region and possibly the United States Arctic. The existing maritime infrastructure in the vicinity of Nome is not adequate to accommodate the need for an efficient and safe harbor appropriate to current vessel traffic in the Arctic Region of the United States. The State of Alaska, Department of Transportation is working with the U. S. Army Corps of Engineers in investigating the need for expanding the existing maritime infrastructure within the Bering Sea Region. This region of Alaska has been identified as having the potential for improving the northern-most, naturally occurring deep water port. At present, the region does not appropriately and safely accommodate the needs of maritime users already located at or transiting the area.

This project was authorized by general language in Section 5007 of Public Law 119–114, the Water Resources Development Act of 2007.

The Study Authority is the House Public Works Committee Resolution for Rivers and Harbors in Alaska, adopted December 2, 1970. The resolution states:

''Resolved by the Committee on Public Works of the House of Representatives, United States, that the Board of Engineers for Rivers and Harbors is hereby requested to review the reports of the Chief of Engineers on Rivers and Harbors in Alaska, published as House Document Numbered 414, 83rd Congress, 2nd Session; and other pertinent reports, with a view to determining whether any modifications of the recommendations contained herein are advisable at the present time.''

This EIS will assess the potential environmental impacts of constructing, operating, and maintaining existing and possibly new navigation infrastructure in the Norton Sound and Bering Strait Region. The EIS will aid decision making on the Arctic Deep Draft Ports study by evaluating the environmental impacts of the range of reasonable alternatives, as well as providing a means for public input into the decision making process. USACE is committed to ensuring that the public has ample opportunity to participate in this review.

Preliminary Alternatives

Consistent with NEPA implementation requirements, this EIS will assess the range of reasonable alternatives regarding constructing, operating, maintaining, and funding a proposed project that results from the study. The following types of alternatives have been identified for the region and are subject to modification in response to comments received during the public scoping process.

Structural Alternatives: This set of alternatives will investigate and describe possible harbor construction or improvement alternatives. Types of structural solutions could include, but are not limited to, rubble mound breakwaters, dredging, Search and Rescue infrastructure, disaster response infrastructure, mooring basins, modified entrance channels, navigation aids, etc.

Nonstructural Alternatives: Nonstructural alternatives could include, but are not limited to, solutions like traffic management and Port Authority establishment.

No Action Alternative: Under the ''no action'' alternative, the Norton Sound Region would continue to encounter the haphazard navigation scenario that presently exists in a challenging maritime environment associated with the Bering Sea and other Arctic waters.

USACE would appreciate comments regarding whether there are additional alternatives for the Environmental Impact Statement for Arctic Deep Draft Ports Navigation Improvements Feasibility Study that should be considered.

Identification of Environmental and Other Issues

USACE intends to address the following environmental issues when assessing the potential environmental impacts of the alternatives in this EIS. Additional issues may be identified as a result of the scoping process. USACE invites comment from Federal agencies; state, local, and tribal governments; and the general public on these and any other issues that should be considered in the EIS:

- Potential impacts on health from the existing usage of the area by transiting and local vessels.
- Potential impacts on health, both positive and negative, as a result of project implementation.
- Potential impacts to workers during the construction of the facilities.
- Potential impacts to surface water, tidelands and fauna including turbidity from construction activities.
- Potential impacts on air quality from emissions and from noise during construction and operations.
- Potential cumulative impacts of the past, present, and reasonably foreseeable future actions including impacts resulting from activities foreign and domestic, multinational, Federal, state, and local.
- Potential impacts to historically significant properties, if present, and on access to traditional use areas.
- Potential impacts on local, regional, or national resources from materials and utilities required for construction and operation.
- Potential impacts on ecological resources, including threatened and endangered species and water quality.
- Potential impacts on local employment, income, population, housing, and public services from harbor construction and operations.

NEPA Process

The EIS for the proposed project will be prepared pursuant to the NEPA of 1969 (42 U.S.C. 4321 *et seq.*), Council on Environmental Quality NEPA Regulations (40 CFR parts 1500–1508), and USACE's NEPA Implementing Procedures (33 CFR parts 230 and 325). Following the publication of this Notice of Intent, USACE will continue the scoping process, prepare and distribute the draft EIS for public review, hold public meetings to solicit public comment on the draft EIS, and publish a final EIS. Not less than 30 days after the publication of the U.S. Environmental Protection Agency's Notice of Availability of the final EIS, USACE may issue a Record of Decision (ROD) documenting its decision concerning the proposed action.

EIS Schedule

The draft EIS is scheduled to be published no sooner than December 2013. A 45-day comment period on the draft EIS is planned, which will include public meetings to receive comments. Availability of the draft EIS, the dates of the public comment period, and information about public meetings will be announced in the **Federal Register** and in the local news media.

The final EIS for the Environmental Impact Statement for Arctic Deep Draft Ports Navigation Improvements Feasibility Study is scheduled for no sooner than November 2014. A ROD would be issued no sooner than 30 days after the U. S. Environmental Protection Agency's notice of availability of the final EIS is published in the **Federal Register**.

Gregory Schmidt,

Deputy Chief, Engineering Division.

[FR Doc. 2013–11850 Filed 5–17–13; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Applications for New Award; Technical Assistance To Improve State Data Capacity—National Technical Assistance Center To Improve State Capacity To Accurately Collect and Report IDEA Data

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information

Technical Assistance to Improve State Data Capacity—National Technical Assistance Center to Improve State Capacity to Accurately Collect and Report IDEA Data Notice inviting applications for a new award for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.373Y.

DATES:

Application Available: May 20, 2013.

Deadline for Transmittal of Applications: July 19, 2013.

Deadline for Intergovernmental Review: September 17, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Technical Assistance to Improve State Data Capacity program is to improve the capacity of States to meet their Individuals with Disabilities Education Act (IDEA) data collection and reporting requirements under sections 616 and 618 of the IDEA. Funding for the program is authorized under section 611(c)(1) of the IDEA, which gives the Secretary the authority to reserve funds appropriated under section 611 of the IDEA to provide technical assistance (TA) authorized under section 616(i) of the IDEA. Section 616(i) requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of sections 616 and 618 of the IDEA are collected, analyzed, and accurately reported. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements under the IDEA.

Priority: This priority is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2013 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

National Technical Assistance Center To Improve State Capacity To Accurately Collect and Report IDEA Data

The purpose of this priority is to fund a cooperative agreement to support the establishment and operation of a National Technical Assistance Center to Improve State Capacity to Accurately Collect and Report IDEA Data (Data Center). The Data Center will provide TA to improve the capacity of States to meet IDEA data collection and reporting requirements by:

(a) Improving data infrastructure by coordinating and promoting communication and effective data governance strategies among relevant State offices including State educational agencies (SEAs) and State lead agencies, local educational agencies (LEAs), schools, early intervention service (EIS) providers, and TA providers to improve the quality of the IDEA data;

(b) Using results from the Department's auto-generated error reports to communicate with State IDEA Data Managers and other relevant stakeholders in the State (e.g., ED*Facts* Coordinator) about data that appear to be inaccurate and provide support to the State (as needed) to enhance current State validation procedures to prevent future errors in State-reported IDEA data;

(c) Using the results of the Department's review of State-reported data to help States ensure that data are collected and reported from all programs providing special education and related services within the State;

(d) Addressing personnel training needs by developing effective informational tools (e.g., training modules) and resources (e.g., cross-walk documents about IDEA and non-IDEA data elements) about data collection and reporting requirements that States can use to train personnel in schools, programs, agencies, and districts;

(e) Supporting States in submitting data into ED*Facts* by coordinating with ED*Facts* TA providers (i.e., Partner Support Center; see *www2.ed.gov/about/inits/ed/edfacts/support.html*) about IDEA-specific data reporting requirements and providing ED*Facts* reports and TA to States to help them improve the accuracy of their IDEA data submissions;

(f) Improving IDEA data validation by using results from data reviews conducted by the Department to work with States to generate tools (e.g., templates of data dashboards) that can be used by States to accurately communicate data to local data-consumer groups (e.g., school boards, the general public) and lead to improvements in the validity and reliability of data required by IDEA; and

(g) Using results from the Department's review of State-reported Annual Performance Report (APR) data to provide intensive and individualized TA to improve the accuracy of qualitative information provided in the APR about the State's efforts to improve its implementation of the requirements and purposes of IDEA, and to more accurately target its future improvement activities.

The TA provided by the Data Center must be directed at all relevant parties within a State that can affect the quality of IDEA data and must not be limited to State special education or early intervention offices. The Data Center's TA must primarily target data issues identified through the Department's review of IDEA data. TA needs can also be identified by a State's review of IDEA data or other relevant means, but TA must be based on an identified need related to improving IDEA data accuracy or timeliness. Effectiveness of the Data Center's TA will be demonstrated through changes in a State's capacity to collect and report valid and reliable IDEA data and resolve identified data issues.

Funding for the Data Center is authorized under section 611(c)(1) of the IDEA, which gives the Secretary the authority to reserve funds appropriated under section 611 of the IDEA to provide TA authorized under section 616(i) of the IDEA. Section 616(i) requires the Secretary to review the data collection and analysis capacity of States to ensure that data and information determined necessary for implementation of sections 616 and 618 of the IDEA are collected, analyzed, and accurately reported. It also requires the Secretary to provide TA, where needed, to improve the capacity of States to meet the data collection requirements under the IDEA.

To be considered for funding under this absolute priority, applicants must meet the application requirements contained in this priority. Any project funded under this priority also must meet the programmatic and administrative requirements specified in the priority.

Application Requirements. An applicant must include in its application—

(a) A logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the project. A logic model communicates how a project will achieve its outcomes and provides a framework for both the formative and summative evaluations of the project;

Note: The following Web site provides more information on logic models and lists multiple online resources: *www.cdc.gov/eval/resources/index.htm;*

(b) A plan to implement the activities described in the *Project Activities* section of this priority;

(c) A plan, linked to the project's logic model, for a formative evaluation of the project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the project, including objective measures of progress in implementing the project and ensuring the quality of products and services;

(d) A budget for a summative evaluation to be conducted by an independent third party;

(e) A budget for attendance at the following:

(1) A one and one-half day kick-off meeting to be held in Washington, DC, after receipt of the award, and an annual planning meeting held in Washington, DC, with the Office of Special Education Programs (OSEP) project officer and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(2) A three-day project directors' conference in Washington, DC, during each year of the project period;

(3) A three-day data conference up to twice each year in Washington, DC, and planned by the National Center for Education Statistics (NCES) for data professionals from all levels of government to discuss technical and policy issues related to the collection, maintenance, and use of education data, new evidence-based practices related to data, and Department initiatives about data collection and reporting, during each year of the project period;

(4) A one-day intensive review meeting that will be held in Washington, DC, during the last half of the second year of the project period; and

(5) Up to 36 days per year on-site at the Department to participate in meetings about IDEA data; meet with ED*Facts* staff, as appropriate; conduct conference sessions with program staff from States, LEAs, schools, EIS providers, and other local programs that contribute to the State data system to meet IDEA data collection requirements (e.g., NCES conferences); coordinate TA activities with other Department TA initiatives including, but not limited to, the Privacy TA Center (see *www2.ed.gov/policy/gen/guid/ptac/index.html*), Statewide Longitudinal Database Systems TA (see *http://nces.ed.gov/programs/slds/*), Implementation and Support Unit TA (see *www2.ed.gov/about/inits/ed/implementation-support-unit/index.html*), and ED*Facts* Partner Support Center (see *www2.ed.gov/about/inits/ed/edfacts/support.html*); and attend other meetings as requested by OSEP; and

(f) A line item in the budget for an annual set-aside of four percent of the grant amount to support emerging needs that are consistent with the project's activities, as those needs are identified in consultation with OSEP.

Note: With approval from the OSEP project officer, the Data Center must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period.

Project Activities. To meet the requirements of this priority, the Data Center, at a minimum, must conduct the following activities:

Technology and Tools

(a) Assist relevant parties in the State in the development of data validation procedures and tools; and

(b) Assist States in creating or enhancing TA tools that build local staff capacity to accurately collect and report data under IDEA Parts B and C that is required to be reported to the Department and the public under sections 616 and 618 of the IDEA (e.g., reviewing current State training efforts and consulting with the SEA or State lead agency about materials and methods to improve efficiency or effectiveness of State training strategies); tools must be designed to improve the capacity of States to meet IDEA data requirements.

TA and Dissemination Activities

(a) Provide TA to State data submitters and local data collectors on various data quality issues; topics must include summaries of data quality issues evident from data reviews that will be primarily conducted by the Department; as appropriate, technology should be used to convey information efficiently and effectively (e.g., webinars);

(b) Develop an agenda for information sessions, which can be conducted at conferences or through webinars, specific to required IDEA data and submit the agenda for approval by OSEP. The purpose of the sessions is to ensure that State IDEA Data Managers have current knowledge and tools to collect, analyze, and accurately report IDEA data to the Department and gain new knowledge and tools that can be used to build data capacity at the local level;

(c) Provide a range of general and targeted TA products and services [1] on evidence-based practices that result in valid and reliable data and build the

[1] For information about universal/general, targeted/specialized, and intensive/sustained TA, see *https://tacc-epic.s3.amazonaws.com/uploads/site/162/ConceptFrmwrkLModel%2BDefs Aug2012.pdf?AWSAccessKeyId=AKIAIMS3GHWZEDKKDRDQ&Expires=1367515628&Signature=8o%2FKA2BtZN3JjV1KS2ZIj1xUHhA%3D.*

capacity of data collectors to collect valid and reliable data (e.g., State IDEA Data Manager training webinars for newly hired staff, white papers, technical briefs, review of data systems for usability improvements); all TA must improve the capacity of States to meet IDEA data requirements; all TA inquiries and responses must be recorded and be accessible to the OSEP project officer;

(d) Conduct approximately eight intensive on-site TA visits each year focused on improving the capacity of States to meet IDEA data requirements. Visits should be distributed among Part C and Part B programs based on need and consultation with OSEP. On-site TA visits should be coordinated with other Department on-site visits (e.g., ED*Facts,* OSEP monitoring), to the extent that coordination will lead to improvements in the collection, analysis, and accurate reporting of IDEA Part B data at the school, LEA, and State levels and of IDEA Part C data by EIS providers and at the EIS program and State levels. All intensive TA visits should include State IDEA Data Managers, ED*Facts* Coordinators (as appropriate), and other relevant State parties. TA activities should emphasize building staff or data system capacity at State and local levels. Intensive TA may include a broad range of activities to meet the needs of each State. For example, an intensive TA activity may include the review of the data systems used by the State to identify system usability improvements to increase data use and data quality. The TA visits may include local data collectors or reporters, such as representatives from local EIS providers, and must focus on: (1) Resolving an identified data validity issue or system capacity issue; (2) achieving measurable outcomes; and (3) ''mapping'' the relationship of the data validity issue or system capacity issue with other IDEA data elements that are likely to be affected by the data validity issue or system capacity issue;

(e) Plan and conduct data analytic workshops for local data collectors and reporters, which can be conducted at conferences or through webinars, to improve the capacity of States to meet IDEA data collection requirements. The workshops must target interdisciplinary teams of professionals from a small group of LEAs or EIS providers from each participating State to analyze the validity of data about a targeted issue relevant to infants, toddlers, children, or students with disabilities (e.g., ensuring consistency in data reporting on outcomes in all local programs in the State) and lead to plans that can be used by the EIS providers or LEAs to improve their IDEA data collection and reporting, as well as inform State-level data quality initiatives;

(f) Maintain a Web site that meets government or industry-recognized standards for accessibility and is targeted to local and State data collectors. TA material developed by the Data Center, including the results of analyses conducted to improve State capacity to collect and report IDEA data, may be posted on the Data Center site. Note that the Department will post IDEA section 618 data collection instructions (e.g., ED*Facts* file specifications) on *www.ed.gov/edfacts* and will publish IDEA section 618 data on a *.gov Web site (e.g., *www.data.gov/education*);

(g) Support States in verifying the accuracy and completeness of IDEA data prior to submission to the Department through activities such as data analyses, including ensuring that data are consistent with data about students with disabilities reported in other data collections (e.g., ensure that counts of students with disabilities reported to meet IDEA reporting requirements align appropriately with counts reported for other Federal programs); analytic activities must be linked to improving State capacity to meet the IDEA data collection requirements;

(h) Solicit and compile State recommendations for automated data validation procedures that can be built into ED*Facts* to support States in submitting accurate data. Examples include business rules that would prevent States from submitting invalid data (e.g., greater than 100 percent of assessment participants scoring proficient) and alerts that would ask the States to verify the accuracy of improbable data prior to completion of the submission (e.g., no data where non-zero counts are expected);

(i) Prepare and disseminate topical reports, documents, and other materials that support States in meeting IDEA data collection and reporting requirements;

(j) Develop guidance documents and tools for States to use to communicate with local data collectors and reporters about new or changing data requirements; the Data Center should communicate with States using current technology; and

(k) Support States in meeting APR submission requirements, including by—

(1) As needed, evaluating sampling plans developed by States to report APR data based on a sample of districts, schools, or EIS providers;

(2) Evaluating the quality, accuracy, and validity of State Performance Plan (SPP) and APR quantitative data; and

(3) Using results from the Department's review of APR data to support States in their analyses of available data so that States can provide accurate qualitative information to the Department about their efforts to meet the requirements and purposes of the IDEA, and to more accurately target future improvement activities in their SPPs and APRs.

Leadership and Coordination Activities

(a) Consult with representatives from State and local educational agencies and State Part C lead agencies and EIS providers; school or district administrators; IDEA data collectors; data system staff responsible for IDEA data quality; data system management or data governance staff; and other consumers of State-reported IDEA data and informed stakeholders, as appropriate, on TA needs of stakeholders as they relate to the activities and outcomes of the Data Center, and provide a list of these representatives to OSEP within eight weeks of receiving its grant award notice. For this purpose, the Data Center may convene meetings, whether in person, by phone, or other means, or may consult with people individually about the activities and outcomes of the Data Center;

(b) Communicate and coordinate, on an ongoing basis, with other Department-funded projects to: (1) Develop products to improve data collection capacity (e.g., What Works Clearinghouse); (2) support State monitoring of IDEA implementation through data use; and (3) develop and disseminate resources about data privacy issues (e.g., Privacy TA Center; see *www.ed.gov/ptac*); and

(c) Maintain ongoing communication with the OSEP project officer.

Fourth and Fifth Years of the Project

In deciding whether to continue funding the project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary. This review will be conducted during a one-day intensive meeting in Washington, DC, that will be held during the last half of the second year of the project period;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The quality, relevance, and usefulness of the project's activities and products and the degree to which the project's activities and products have

contributed to changed practice and improved State capacity to collect and report high-quality data required under sections 616 and 618 of the IDEA.

Program Authority: 20 U.S.C. 1411(c), 1416(i), and 1418(c).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 97, 98, and 99. (b) The Education Department debarment and suspension regulations in 2 CFR part 3485. (c) The notice of final priority for this competition, published elsewhere in this issue of the **Federal Register**.

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 (IHEs) only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $6,500,000.

Maximum Award: We will reject any application that proposes a budget exceeding $6,500,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitation Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months with an optional additional 24 months based on performance. Applications must include plans for both the 36-month award and the 24-month extension.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs, including public charter schools that are considered LEAs under State law; IDEA Part C State lead agencies; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other:* The project funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of the IDEA).

IV. Application and Submission Information

1. *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: *www.ed.gov/fund/grant/apply/grantapps/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, toll free: 1–877–576–7734.

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 package from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.373Y.

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.

2. *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.

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. You must limit Part III to the equivalent of no more than 100 pages, using 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, references, and captions, as well as all text in charts, tables, figures, and graphs.
- 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. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The 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 page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: May 20, 2013.

Deadline for Transmittal of Applications: July 19, 2013.

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. 7. *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: September 17, 2013.

4. *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.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, Central Contractor Registry, and System for Award Management:* 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)—and, after July 24, 2012, with the System for Award Management

(SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR or SAM 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 or SAM 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 registration annually. This may take three or more business days to complete. Information about SAM is available at SAM.gov.

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.*

7. *Other Submission Requirements:* Applications for grants under this program 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 National Technical Assistance Center to Improve State Capacity to Accurately Collect and Report IDEA Data, CFDA number 84.373Y, 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 application for the National Technical Assistance Center to Improve State Capacity to Accurately Collect and Report IDEA Data competition 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 (e.g., search for 84.373, not 84.373Y).

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 4:30:00 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 4:30:00 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 4:30:00 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 *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 (a Department-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 4:30:00 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 4:30:00 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 prevents 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: Richelle Davis, U.S. Department of Education, 400 Maryland Avenue SW., Room 4052, Potomac Center Plaza (PCP), Washington, DC 20202–2600. FAX: (202) 245–7617.

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 84.373Y), 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 84.373Y), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 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 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* 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. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of the IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers, by ensuring that greater numbers of individuals who are eligible to serve as

reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

4. *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 part 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); or we may send you an email containing a link to access an electronic version of your 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 APR 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 goal of the Data Center is to provide TA that will improve the capacity of States to meet IDEA data collection and reporting requirements. Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on the effectiveness and quality of the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program. We are proposing to use the measures established for the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program to assess the performance of the Technical Assistance to Improve State Data Capacity program. See *www2.ed.gov/fund/grant/apply/osep/funding.html.* The Department will use these measures to assess the extent to which this program provides high-quality products and services, the relevance of project products and services to educational and early intervention policy and practice, and the usefulness of products and services to improve State data capacity to collect and report IDEA data. Grantees will be required to report information on their project's performance in annual reports to the Department (34 CFR 75.590).

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: Richelle Davis, U.S. Department of Education, 400 Maryland Avenue SW., Room 4052, PCP, Washington, DC 20202–2600. Telephone: (202) 245–7401 or by email: *richelle.davis@ed.gov.*

If you use a TDD or a TTY, call the Federal Relay Service (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) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

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: May 15, 2013.

Michael Yudin,

Delegated the authority to perform the functions and duties of the Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–11967 Filed 5–17–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research Training Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research Training Centers (RRTCs)—Disability Statistics and Demographics

Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–7.

DATES:

Applications Available: May 20, 2013.

Date of Pre-Application Meeting: June 10, 2013.

Deadline for Transmittal of Applications: July 19, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technologies that maximize the full inclusion and integration of individuals with disabilities into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Research Training Centers (RRTCs)

The purpose of the RRTCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to achieve the goals of, and improve the effectiveness of, services authorized under the Rehabilitation Act through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. These activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. Additional information on the RRTC program can be found at: *www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Priorities: There are two priorities for this competition. The first priority is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**. The second priority is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program published in the **Federal Register** on February 1, 2008 (73 FR 6132).

Absolute Priorities: For FY 2013 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 these priorities.

These priorities are:

Priority 1—Disability Statistics and Demographics

Note: The full text of this priority is included in the notice of final priority published elsewhere in this issue of the **Federal Register**, and in the application package for this competition.

Priority 2—General RRTC Requirements

Note: The full text of this priority is included in the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on February 1, 2008 (73 FR 6132), and in the application package for this competition.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 86, and 97. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 350. (d) The notice of final priority for this program, published elsewhere in this issue of the **Federal Register**. (e) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on February 1, 2008 (73 FR 6132).

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $875,000.

Maximum Award: We will reject any application that proposes a budget exceeding $875,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *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: *www.ed.gov/fund/grant/apply/grantapps/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, toll free: 1–877–576–7734.

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 competition as follows: CFDA number 84.133B–7.

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.

2. *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.

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. We recommend that you limit Part III to the equivalent of no more than 100 pages, using 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, references, and captions, as well as all

text in charts, tables, figures, and graphs.

• 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. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

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 page limit does apply to all of the application narrative section (Part III).

An applicant should consult NIDRR's Long-Range Plan (Plan) when preparing its application. The Plan, which was published in the **Federal Register** on April 4, 2013 (78 FR 20299), can be accessed on the Internet at the following site: *http://www.gpo.gov/fdsys/pkg/FR-2013-04-04/html/2013-07879.htm*.

3. *Submission Dates and Times:*

Applications Available: May 20, 2013.

Date of Pre-Application Meeting: June 10, 2013.

Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available, by telephone, on the same day from 3:30 p.m. to 4:30 p.m., Washington, DC time to provide information and technical assistance through individual consultation. For further information, or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact the following person:

Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov.*

Deadline for Transmittal of Applications: July 19, 2013.

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. 7. *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 individual 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.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, Central Contractor Registry, and System for Award Management:* 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)—and, after July 24, 2012, with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CRR or SAM 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 or SAM 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 registration annually. This may take three or more business days to complete. Information about SAM is available at SAM.gov.

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.*

7. *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 RRTC for Disability Statistics and Demographics competition, CFDA Number 84.133B–7, 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 application for the RRTC Disability Statistics and Demographics competition 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 (e.g., search for 84.133, not 84.133B).

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 4:30:00 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 4:30:00 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 4:30:00 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 *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 (a Department-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 4:30:00 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 4:30:00 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 prevents 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: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

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 84.133B–7), 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 84.133B–7) 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 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 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* 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) or we may send you an email containing a link to access an electronic version of your 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:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The number of products (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.
- The number of new or improved NIDRR-funded assistive and universally designed technologies, products, and devices transferred to industry for potential commercialization.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports for these reviews.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *www.ed.gov/about/offices/list/opepd/sas/index.html.*

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: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov.*

If you use a TDD or a TTY call the Federal Relay Service (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) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY call the FRS, toll-free, at 1–800–877–8339.

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: May 15, 2013.

Michael K. Yudin,

Delegated the authority to perform the functions and the duties of the Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–11987 Filed 5–17–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; National Institute on Disability and Rehabilitation Research—Rehabilitation Research and Training Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers—Community Living and Participation for Individuals with Psychiatric Disabilities Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133B–9.

DATES:

Applications Available: May 20, 2013.

Date of Pre-Application Meeting: June 10, 2013.

Deadline for Transmittal of Applications: July 19, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Research and Training Centers (RRTCs)

The purpose of the RRTCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to achieve the goals of the Rehabilitation Act through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. These activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. Additional information on the RRTC program can be found at: *www.ed.gov/rschstat/research/pubs/res-program.html#RRTC.*

Priorities: There are two priorities for this competition. One priority is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**. The other priority—the General RRTC Requirements priority—is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on February 1, 2008 (73 FR 6132), and it applies to all RRTC competitions.

Absolute Priorities: For FY 2013 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 both of these priorities.

These priorities are:

Priority 1—Community Living and Participation for Individuals With Psychiatric Disabilities

Note: The full text of this priority is included in the notice of final priority published elsewhere in this issue of the **Federal Register** and in the application package for this competition.

Priority 2—General RRTC Requirements

Note: The full text of this priority is included in the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on February 1, 2008 (73 FR 6132), and in the application package for this competition.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 86, and 97. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 350. (d) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program published in the **Federal Register** on February 1, 2008 (73 FR 6132). (e) The notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $875,000.

Maximum Award: We will reject any application that proposes a budget exceeding $875,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *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: *www.ed.gov/fund/grant/apply/grantapps/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, toll free: 1–877–576–7734.

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 as follows: CFDA number 84.133B–9.

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.

2. *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 program.

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. We recommend that you limit Part III to the equivalent of no more than 100 pages, using 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, references, and captions, as well as all text in charts, tables, figures, and graphs.
- 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 page limit does apply to all of the application narrative section (Part III).

An applicant should consult NIDRR's Long-Range Plan for Fiscal Years 2013–2017 (78 CFR 20299) (Plan) when preparing its application. The Plan is organized around the following research domains: (1) Community Living and Participation; (2) Health and Function; and (3) Employment.

3. *Submission Dates and Times:*

Applications Available: May 20, 2013.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on June 10, 2013. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or to arrange for an individual consultation, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Deadline for Transmittal of Applications: July 19, 2013.

Applications for grants under this program 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.7. *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.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, Central Contractor Registry, and System for Award Management:* 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)—and, after July 24, 2012, with the System for Award Management (SAM), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR or SAM 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 or SAM 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 registration annually. This may take three or more business days to complete. Information about SAM is available at SAM.gov.

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.*

7. *Other Submission Requirements:* Applications for grants under this program 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 Community Living and Participation for Individuals with Psychiatric Disabilities RRTC program, CFDA number 84.133B–9, 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 application for the Community Living and Participation for Individuals with Psychiatric Disabilities RRTC program at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133B).

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 4:30:00 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 4:30:00 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 4:30:00 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 program 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 *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. Additional, detailed information on how to attach files is in the application instructions.
- 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 (a Department-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 4:30:00 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 4:30:00 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 prevents 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: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

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 84.133B–9), 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 84.133B–9), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 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 program 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 program are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* 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); or we may send you an email containing a link to access an electronic version of your 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:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The number of products (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices developed or tested with NIDRR funding) that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports for these reviews.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *www.ed.gov/about/offices/list/opepd/sas/index.html.*

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: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov.*

If you use a TDD or a TTY, call the Federal Relay Service (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) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY, call the FRS, toll-free, at 1–800–877–8339.

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: May 15, 2013.

Michael K. Yudin,

Delegated the authority to perform the functions and the duties of the Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–11977 Filed 5–17–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Federal Need Analysis Methodology for the 2014–15 Award Year—Federal Pell Grant, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, William D. Ford Federal Direct Loan, Iraq and Afghanistan Service Grant and TEACH Grant Programs

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.063; 84.038; 84.033; 84.007; 84.268; 84.408; 84.379.

SUMMARY: The Secretary announces the annual updates to the tables used in the statutory Federal Need Analysis Methodology that determines a student's expected family contribution (EFC) for award year 2014–2015 for these student financial aid programs. The intent of this notice is to alert the financial aid community and the broader public, to these required annual updates used in the determination of student aid eligibility.

FOR FURTHER INFORMATION CONTACT: Marya Dennis, U.S. Department of Education, Room 63G2, Union Center Plaza, 830 First Street NE., Washington, DC 20202–5454. Telephone: (202) 377–3385.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Part F of title IV of the Higher Education Act of 1965, as amended (HEA), specifies the criteria, data elements, calculations, and tables the Department uses in the Federal Need Analysis Methodology to determine the EFC.

Section 478 of part F of title IV of the HEA requires the Secretary to annually update four tables for general price inflation—the Income Protection Allowance, the Adjusted Net Worth of a Business or Farm, the Education Savings and Asset Protection Allowance, and the Assessment Schedules and Rates. The changes are based, in general, upon increases in the Consumer Price Index (CPI).

For award year 2014–2015, the Secretary is charged with updating the income protection allowance for parents of dependent students, adjusted net worth of a business or farm, the Education Savings and Asset Protection Allowance, and the assessment schedules and rates to account for inflation that took place between

December 2012 and December 2013. However, because the Secretary must publish these tables before December 2013, the increases in the tables must be based on a percentage equal to the estimated percentage increase in the Consumer Price Index for All Urban Consumers (CPI–U) for 2013. The Secretary must also account for any misestimation of inflation for the immediately preceding year.

In developing the table values for the 2013–14 award year, the Secretary assumed a 2.2 percent increase in the CPI–U for the period December 2011 through December 2012. Actual inflation for this time period was 2.1 percent. The Secretary estimates that the increase in the CPI–U for the period December 2012 through December 2013 will be 2.5 percent.

Additionally, section 601 of the College Cost Reduction and Access Act of 2007 (CCRAA, Pub. L. 110–84) amended sections 475 through 478 of the HEA affecting the income protection allowance (IPA) tables for the 2009–2010 through 2012–2013 award years and indexed the annual update by a percentage of the estimated Consumer Price Index thereafter. These changes to the IPA impact dependent students, as well as independent students with dependents other than a spouse and independent students without dependents other than a spouse. As amended by the CCRAA, this notice includes the new 2014–2015 award year values for the IPA tables. The updated tables are in sections 1, 2, and 4 of this notice.

As provided for in section 478(d) of the HEA, for each award year the Secretary must also revise the education savings and asset protection allowances. The Education Savings and Asset Protection Allowance table for award year 2014–2015 has been updated in section 3 of this notice.

Section 478(h) of the HEA also requires the Secretary to increase the amount specified for the Employment Expense Allowance, adjusted for inflation. This calculation is based on increases in the Bureau of Labor Statistics budget of the marginal costs for a two-worker family compared to a one-worker family. The items covered by this calculation are: food away from home, apparel, transportation, and household furnishings, and operations. The Employment Expense Allowance table for award year 2014–2015 has been updated in section 5 of this notice.

The HEA requires the following annual updates:

1. *Income Protection Allowance (IPA).* This allowance is the amount of living expenses associated with the maintenance of an individual or family that may be offset against the family's income. The allowance varies by family size. The IPA for the dependent student is $6,260. The IPAs for parents of dependent students for award year 2014–2015 are as follows:

PARENTS OF DEPENDENT STUDENTS

Family size	Number in college				
	1	2	3	4	5
2	$17,440	$14,460	.....	.....	.....
3	21,720	18,750	$15,770	.....	.....
4	26,830	23,840	20,870	$17,890	.....
5	31,650	28,670	25,700	22,710	$19,750
6	37,020	34,040	31,070	28,090	25,120

For each additional family member add $4,180. For each additional college student subtract $2,970.

The IPAs for independent students with dependents other than a spouse for award year 2014–2015 are as follows:

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

Family size	Number in college				
	1	2	3	4	5
2	$24,650	$20,430	.....	.....	.....
3	30,690	26,490	$22,280	.....	.....
4	37,890	33,690	29,500	$25,270	.....
5	44,710	40,490	36,300	32,090	$27,900
6	52,290	48,080	43,900	39,670	35,480

For each additional family member add $5,900.

For each additional college student subtract $4,190.

The IPAs for single independent students and independent students without dependents other than a spouse for award year 2014–2015 are as follows:

Marital status	Number in college	IPA
Single	1	$9,730
Married	2	9,730
Married	1	15,600

2. *Adjusted Net Worth (NW) of a Business or Farm.* A portion of the full NW (assets less debts) of a business or farm is excluded from the calculation of an expected contribution because (1) the income produced from these assets is already assessed in another part of the formula; and (2) the formula protects a portion of the value of the assets.

The portion of these assets included in the contribution calculation is computed according to the following schedule. This schedule is used for parents of dependent students, independent students without dependents other than a spouse, and independent students with dependents other than a spouse.

If the NW of a business or farm is	Then the adjusted NW is
Less than $1	$0.
$1 To $125,000	$0 + 40% of NW.
$125,001 To $375,000	$50,000 + 50% of NW over $125,000.
$375,001 To $620,000	$175,000 + 60% of NW over $375,000.
$620,001 or more	$322,000 + 100% of NW over $620,000.

3. *Education Savings and Asset Protection Allowance.* This allowance protects a portion of NW (assets less debts) from being considered available for postsecondary educational expenses. There are three asset protection allowance tables: One for parents of dependent students, one for independent students without dependents other than a spouse, and one for independent students with dependents other than a spouse.

PARENTS OF DEPENDENT STUDENTS

If the age of the older parent is	And they are	
	Married	Single
	Then the education savings and asset protection allowance is	
25 or less	0	0
26	1,800	400
27	3,600	800
28	5,500	1,300
29	7,300	1,700
30	9,100	2,100
31	10,900	2,500
32	12,700	2,900
33	14,600	3,400
34	16,400	3,800
35	18,200	4,200
36	20,000	4,600
37	21,800	5,000
38	23,700	5,500
39	25,500	5,900
40	27,300	6,300
41	27,900	6,500
42	28,500	6,600
43	29,200	6,800
44	30,000	6,900
45	30,700	7,100
46	31,500	7,200
47	32,200	7,400
48	33,000	7,600
49	33,800	7,800
50	34,600	8,000
51	35,700	8,100
52	36,500	8,300
53	37,600	8,500
54	38,500	8,700
55	39,700	9,000
56	40,600	9,200
57	41,800	9,400
58	43,000	9,700
59	44,200	9,900
60	45,500	10,200
61	46,800	10,400
62	48,100	10,700
63	49,500	11,000
64	50,900	11,300
65 or older	52,600	11,600

INDEPENDENT STUDENTS WITH DEPENDENTS OTHER THAN A SPOUSE

If the age of the student is	And they are	
	Married	Single
	Then the education savings and asset protection allowance is	
25 or less	0	0
26	1,800	400
27	3,600	800
28	5,500	1,300
29	7,300	1,700
30	9,100	2,100
31	10,900	2,500
32	12,700	2,900
33	14,600	3,400
34	16,400	3,800
35	18,200	4,200
36	20,000	4,600
37	21,800	5,000
38	23,700	5,500
39	25,500	5,900
40	27,300	6,300
41	27,900	6,500
42	28,500	6,600
43	29,200	6,800
44	30,000	6,900
45	30,700	7,100
46	31,500	7,200
47	32,200	7,400
48	33,000	7,600
49	33,800	7,800
50	34,600	8,000
51	35,700	8,100
52	36,500	8,300
53	37,600	8,500
54	38,500	8,700
55	39,700	9,000
56	40,600	9,200
57	41,800	9,400
58	43,000	9,700
59	44,200	9,900
60	45,500	10,200
61	46,800	10,400
62	48,100	10,700
63	49,500	11,000
64	50,900	11,300
65 or older	52,600	11,600

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE

If the age of the student is	And they are	
	Married	Single
	Then the education savings and asset protection allowance is	
25 or less	0	0
26	1,800	400
27	3,600	800
28	5,500	1,300
29	7,300	1,700
30	9,100	2,100
31	10,900	2,500
32	12,700	2,900
33	14,600	3,400
34	16,400	3,800
35	18,200	4,200
36	20,000	4,600
37	21,800	5,000
38	23,700	5,500
39	25,500	5,900
40	27,300	6,300

INDEPENDENT STUDENTS WITHOUT DEPENDENTS OTHER THAN A SPOUSE—Continued

If the age of the student is	And they are	
	Married	Single
41	27,900	6,500
42	28,500	6,600
43	29,200	6,800
44	30,000	6,900
45	30,700	7,100
46	31,500	7,200
47	32,200	7,400
48	33,000	7,600
49	33,800	7,800
50	34,600	8,000
51	35,700	8,100
52	36,500	8,300
53	37,600	8,500
54	38,500	8,700
55	39,700	9,000
56	40,600	9,200
57	41,800	9,400
58	43,000	9,700
59	44,200	9,900
60	45,500	10,200
61	46,800	10,400
62	48,100	10,700
63	49,500	11,000
64	50,900	11,300
65 or older	52,600	11,600

4. *Assessment Schedules and Rates.* Two schedules that are subject to updates—one for parents of dependent students and one for independent students with dependents other than a spouse—are used to determine the EFC from family financial resources toward educational expenses. For dependent students, the EFC is derived from an assessment of the parents' adjusted available income (AAI). For independent students with dependents other than a spouse, the EFC is derived from an assessment of the family's AAI. The AAI represents a measure of a family's financial strength, which considers both income and assets.

The Parents' contribution for a dependent student is computed according to the following schedule:

If AAI is	Then the contribution is
Less than −$3,409	−$750.
($3,409) To $15,600	22% Of AAI.
$15,601 To $19,600	$3,432 + 25% Of AAI over $15,600.
$19,601 To $23,500	$4,432 + 29% Of AAI over $19,600.
$23,501 To $27,500	$5,563 + 34% Of AAI over $23,500.
$27,501 To $31,500	$6,923 + 40% Of AAI over $27,500.
$31,501 or more	$8,523 + 47% Of AAI over $31,500.

The contribution for an independent student with dependents other than a spouse is computed according to the following schedule:

If AAI is	Then the contribution is
Less than −$3,409	−$750.
($3,409) To $15,600	22% Of AAI.
$15,601 To $19,600	$3,432 + 25% Of AAI over $15,600.
$19,601 To $23,500	$4,432 + 29% Of AAI over $19,600.
$23,501 To $27,500	$5,563 + 34% Of AAI over $23,500.
$27,501 To $31,500	$6,923 + 40% Of AAI over $27,500.
$31,501 or more	$8,523 + 47% Of AAI over $31,500.

5. *Employment Expense Allowance.* This allowance for employment-related expenses—which is used for the parents of dependent students and for married independent students—recognizes additional expenses incurred by working spouses and single-parent households. The allowance is based on the marginal differences in costs for a two-worker family compared to a one-worker family. The items covered by these additional expenses are: Food away from home, apparel, transportation, and household furnishings and operations.

The employment expense allowance for parents of dependent students, married independent students without

dependents other than a spouse, and independent students with dependents other than a spouse is the lesser of $4,000 or 35 percent of earned income.

6. *Allowance for State and Other Taxes.* The allowance for State and other taxes protects a portion of parents' and students' incomes from being considered available for postsecondary educational expenses. There are four categories for State and other taxes, one each for parents of dependent students, independent students with dependents other than a spouse, dependent students, and independent students without dependents other than a spouse. Section 478(g) of the HEA directs the Secretary to update the tables for State and other taxes after reviewing the Statistics of Income file data maintained by the Internal Revenue Service.

State	Parents of dependents and independents with dependents other than a spouse		Dependents and independents without dependents other than a spouse
	Percent of total income		
	Under $15,000	$15,000 & Up	All (percent)
Alabama	3	2	2
Alaska	2	1	0
Arizona	4	3	2
Arkansas	4	3	3
California	8	7	5
Colorado	4	3	3
Connecticut	8	7	5
Delaware	5	4	3
District of Columbia	7	6	5
Florida	3	2	1
Georgia	5	4	3
Hawaii	4	3	3
Idaho	5	4	3
Illinois	5	4	2
Indiana	4	3	3
Iowa	5	4	3
Kansas	5	4	3
Kentucky	5	4	4
Louisiana	3	2	2
Maine	6	5	4
Maryland	8	7	5
Massachusetts	7	6	4
Michigan	5	4	3
Minnesota	6	5	4
Mississippi	3	2	2
Missouri	5	4	3
Montana	5	4	3
Nebraska	5	4	3
Nevada	3	2	1
New Hampshire	5	4	1
New Jersey	9	8	4
New Mexico	3	2	2
New York	9	8	6
North Carolina	6	5	4
North Dakota	2	1	1
Ohio	5	4	3
Oklahoma	3	2	2
Oregon	7	6	5
Pennsylvania	5	4	3
Rhode Island	7	6	4
South Carolina	5	4	3
South Dakota	2	1	1
Tennessee	2	1	1
Texas	3	2	1
Utah	5	4	3
Vermont	6	5	3
Virginia	6	5	4
Washington	4	3	1
West Virginia	3	2	3
Wisconsin	7	6	4
Wyoming	2	1	1
Other	2	1	2

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under **FOR FURTHER INFORMATION CONTACT** in this notice.

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Program Authority: 20 U.S.C. 1087rr.

Dated: May 15, 2013.

James W. Runcie,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2013–11982 Filed 5–17–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC13–16–000]

Commission Information Collection Activities (Ferc-604); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 USC 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on FERC–604, Cash Management Agreements, an existing collection of information that does not have current OMB approval.

DATES: Comments on the collection of information are due July 19, 2013.

ADDRESSES: You may submit comments (identified by Docket No. IC13–16–000) by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–604, Cash Management Agreements.

OMB Control No.: To be determined.

Type of Request: Three-year approval of the FERC–604 information collection requirements.

Abstract: Cash management or ''money pool'' programs typically concentrate affiliates' cash assets in joint accounts for the purpose of providing financial flexibility and lowering the cost of borrowing.

In a 2001 investigation, FERC staff found that balances in cash management programs affecting FERC-regulated entities totaled approximately $16 billion. Additionally, other investigations revealed large transfers of funds (amounting to more than $1 billion) between regulated pipeline affiliates and non-regulated parents whose financial conditions were precarious. The Commission found that these and other fund transfers and the enormous (mostly unregulated) pools of money in cash management programs could detrimentally affect regulated rates.

To protect customers and promote transparency the Commission issued Order 634–A (2003) requiring entities to formalize in writing and file with the Commission their cash management agreements. The Commission obtained OMB clearance for this new reporting requirement under the FERC–555 information collection (OMB Control No. 1902–0098). However, in subsequent extension requests to OMB for the FERC–555 collection the Commission failed to include the cash management agreement reporting burden as part of the estimates. In this proceeding the Commission rectifies the omission by seeking public comment on the reporting requirement in order to update the OMB clearance for cash management agreement filings. The Commission intends to put the reporting requirements under the collection number, ''FERC–604'' and request a new OMB Control Number.

The Commission implemented these requirements in 18 CFR 141.500, 260.400, and 357.5.

Type of Respondents: Public utilities, natural gas companies, and oil pipeline companies.

Estimate of Annual Burden [1]*:* The Commission estimates the total Public Reporting Burden for this information collection as:

FERC–604, CASH MANAGEMENT AGREEMENTS

	Number of respondents annually (A)	Number of responses per respondent (B)	Total number of responses (A) × (B) = (C)	Average burden hours per response (D)	Estimated total annual burden (C) × (D)
Public utilities and licensees, natural gas companies, and oil pipeline companies	[2] 25	1	25	1.5	37.5

[1] The Commission defines burden as 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. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper

[3] This is a loaded cost (wages plus benefits) for a full-time employee.

The total estimated annual cost burden to respondents is $3,330 [37.5 hours * $70 per hour [3] = $2,625]

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: May 13, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–11882 Filed 5–17–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC13–11–000]

Commission Information Collection Activities (Ferc-539); Comment Request

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting the information collection FERC–539, Gas Pipeline Certificates: Import & Export Related Applications, to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (78 FR 12747, 02/25/2013) requesting public comments. FERC received no comments on the FERC–539 and is making this notation in its submittal to OMB.[1]

DATES: Comments on the collection of information are due by June 19, 2013.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0062, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, identified by the Docket No. IC13–11–000, by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov*, or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: Gas Pipeline Certificates: Import & Export Related Applications.

OMB Control No.: 1902–0062.

Type of Request: Three-year extension of the FERC–539 information collection requirements with no changes to the current reporting requirements.

Abstract: Section 3 of the Natural Gas Act (NGA) [2] provides, in part, that ''. . . no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order from the Commission authorizing it to do so.'' The 1992 amendments to Section 3 of the NGA concern importation or exportation from/to a nation which has a free trade agreement with the United States and requires that such importation or exportation: (1) Shall be deemed to be a ''first sale'' (i.e. not a sale for a resale) and (2) shall be deemed to be consistent with the public interest. Applications for such importation or exportation should be granted without modification or delay.

The regulatory functions of Section 3 are shared by the Commission and the Secretary of Energy, Department of Energy (DOE). The Commission has the authority to approve or disapprove the construction and operation of particular facilities, the site at which such facilities shall be located, and, with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports. The DOE approves the importation or exportation of the natural gas commodity.[3]

Additionally, pursuant to the DOE Delegation Order and Executive Order Nos. 10485 and 12038, the Commission has the authority to issue Presidential Permits for natural gas facilities which cross an international border of the United States. Persons seeking Section 3 authorizations or Presidential Permits from the Commission file applications for such requests pursuant to Part 153 of the Commission's Regulations: Part 153, Subpart B and Subpart C.

Type of Respondents: The respondents include all jurisdictional natural gas companies seeking authorization from the Commission to import or export natural gas

Estimate of Annual Burden[4]*:* The Commission estimates the total Public Reporting Burden for this information collection as:

[2] This figure is based on the number of filings received by the Commission for cash management agreements over the last several years.

[3] This is a loaded cost (wages plus benefits) for a full-time employee.

[1] The Commission has issued two notices regarding this collection in this docket. Neither notice contained the correct burden estimates. This notice corrects the burden estimates and provides the public with an additional 30 days for public comment.

[2] 15 U.S.C. 717–717w.

[3] Secretary of DOE's current delegation of authority to the Commission relating to import and export facilities was renewed by the Secretary's Delegation Order No. 00–004.00A, effective May 16, 2006.

[4] The Commission defines burden as 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. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

FERC–539—GAS PIPELINE CERTIFICATES: IMPORT/EXPORT RELATED

Number of respondents (A)	Number of responses per respondent (B)	Total number of responses (A)×(B)=(C)	Average burden hours per response (D)	Estimated total annual burden (C)×(D)
7	2	14	12	168

The total estimated annual cost burden to respondents is $11,760[168 hours * $70/hour [5] = $11,760]

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: May 13, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–11885 Filed 5–17–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8012–007]

Winchendon Hydroelectric LLC; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Types of Application:* Non-capacity amendment of exemption.
b. *Project No.:* 8012–007.
c. *Date Filed:* April 5, 2013.
d. *Applicant:* Winchendon Hydroelectric LLC.
e. *Name of Project:* Hunts Pond Dam Hydroelectric Project.
f. *Location:* Millers River in Worcester County, Massachusetts.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.
h. *Applicant Contact:* Mr. Stephen J. Fisk, Winchendon Hydroelectric, LLC, 57 Suffolk Street, Suite 200, Holyoke, MA 01040, (413) 536–6062.
i. *FERC Contact:* Alyssa Dorval, (212) 273–5955, *Alyssa.Dorval@ferc.gov.*
j. *Deadline for filing comments, motions to intervene, and protests:* June 11, 2013.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp*. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. Please include the project number (P–8012–007) on any comments or motions filed.

k. *Description of Application:* Winchendon Hydroelectric LLC is requesting a non-capacity exemption amendment to replace two cross-flow turbines with a total generator nameplate capacity of 120 kW to a single double regulated Kaplan unit with a generator capacity of 100 kW. The historical data shows the annual production to be approximately 305,000 kWh. The new Kaplan turbine is estimated to produce an additional 201,000 kWh per year more than the existing installed units resulting in an estimated new annual production value of 506,000 kWh. With the turbine replacement, the hydraulic capacity value will be reduced from the existing units at approximately 172 cubic feet per second (cfs) to the new unit at approximately 110 cfs. The exemptee also plans to address repairs to spalled concrete, stoplog and needle beam maintenance and replacement at the dam as required by the Commission's Division of Dam Safety. To complete the turbine replacement and required maintenance, the exemptee will need to temporarily draw down the project from a normal operating elevation of 954.6 feet National Geodetic Vertical Datum (NGVD) to below the crest of the dam, with a lower limit of 944.48 feet NGVD, for a period lasting from June 2013 through September 2013.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–8012) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone

[5] Average salary (per hour) plus benefits per full-time equivalent employee.

number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the amendment application. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: May 13, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–11881 Filed 5–17–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3984–000.

Applicants: City of Riverside, California.

Description: Compliance Report to be effective N/A.

Filed Date: 5/10/13.

Accession Number: 20130510–5145.

Comments Due: 5 p.m. ET 5/31/13.

Docket Numbers: ER12–2068–003; ER10–2460–005; ER10–2461–005; ER12–682–006; ER11–2201–009; ER13–17–003; ER12–1311–005; ER10–2466–006; ER11–4029–005; ER10–2463–005.

Applicants: Blue Sky East, LLC, Canandaigua Power Partners I, LLC, Canandaigua Power Partners II, LLC, Erie Wind, LLC, Evergreen Wind Power, LLC, Evergreen Wind Power III, LLC, Niagara Wind Power, LLC, Stetson Holdings, LLC, Stetson Wind II, LLC, Vermont Wind, LLC.

Description: Supplement to April 29, 2013 Notice of Change in Status of Blue Sky East, LLC, et al.

Filed Date: 5/9/13.

Accession Number: 20130509–5111.

Comments Due: 5 p.m. ET 5/30/13.

Docket Numbers: ER13–1447–000.

Applicants: Public Service Company of New Mexico.

Description: OATT Order 1000 Compliance Filing to be effective 10/1/2013.

Filed Date: 5/10/13.

Accession Number: 20130510–5026.

Comments Due: 5 p.m. ET 6/24/13.

Docket Numbers: ER13–1448–000.

Applicants: NorthWestern Corporation.

Description: OATT Order No. 1000 Interregional Compliance Filing—MT to be effective 10/1/2013.

Filed Date: 5/10/13.

Accession Number: 20130510–5063.

Comments Due: 5 p.m. ET 6/24/13.

Docket Numbers: ER13–1450–000.

Applicants: Arizona Public Service Company.

Description: OATT Order No. 1000 Interregional Compliance Filing to be effective 12/31/9998.

Filed Date: 5/10/13.

Accession Number: 20130510–5089.

Comments Due: 5 p.m. ET 6/24/13.

Docket Numbers: ER13–1457–000.

Applicants: Deseret Generation & Transmission Co-operative.

Description: OATT Order No. 1000 Interregional Compliance Filing to be effective 10/1/2013.

Filed Date: 5/10/13.

Accession Number: 20130510–5101.

Comments Due: 5 p.m. ET 6/24/13.

Docket Numbers: ER13–1461–000.

Applicants: Tucson Electric Power Company.

Description: OATT Order No. 1000 Interregional Compliance Filing to be effective 12/31/9998.

Filed Date: 5/10/13.

Accession Number: 20130510–5125.

Comments Due: 5 p.m. ET 6/24/13.

Docket Numbers: ER13–1462–000.

Applicants: UNS Electric, Inc.

Description: OATT Order No. 1000 Interregional Compliance Filing to be effective 12/31/9998.

Filed Date: 5/10/13.

Accession Number: 20130510–5127.

Comments Due: 5 p.m. ET 6/24/13.

Docket Numbers: ER13–1463–000.

Applicants: Portland General Electric Company.

Description: OATT Order No. 1000 Interregional Compliance Filing to be effective 10/1/2013.

Filed Date: 5/10/13.

Accession Number: 20130510–5128.

Comments Due: 5 p.m. ET 6/24/13.

Docket Numbers: ER13–1465–000.

Applicants: El Paso Electric Company.

Description: OATT Order No. 1000 Compliance Filing—Interregional to be effective 12/31/9998.

Filed Date: 5/10/13.

Accession Number: 20130510–5135.

Comments Due: 5 p.m. ET 6/24/13.

Docket Numbers: ER13–1466–000.

Applicants: NV Energy, Inc.

Description: OATT Order No. 1000 Interregional Compliance Filing to be effective 12/31/9998.

Filed Date: 5/10/13.

Accession Number: 20130510–5141.

Comments Due: 5 p.m. ET 6/24/13.

Docket Numbers: ER13–1467–000.

Applicants: Idaho Power Company.

Description: OATT Order No. 1000 Interregional Compliance Filing to be effective 10/1/2013.

Filed Date: 5/10/13.

Accession Number: 20130510–5143.

Comments Due: 5 p.m. ET 6/24/13.

Docket Numbers: ER13–1468–000.

Applicants: Massachusetts Electric Company.

Description: Interconnection Agreement Between MECo and IPS Inc. for Granby Landfill to be effective 7/10/2013.

Filed Date: 5/10/13.

Accession Number: 20130510–5144.

Comments Due: 5 p.m. ET 5/31/13.

Docket Numbers: ER13–1469–000.

Applicants: Public Service Company of Colorado.

Description: 2013–05–10–OATT Order No. 1000 Compliance Filing to be effective 12/31/9998.

Filed Date: 5/10/13.

Accession Number: 20130510–5155.

Comments Due: 5 p.m. ET 6/24/13.

Docket Numbers: ER13–1470–000.

Applicants: California Independent System Operator Corporation.

Description: 2013–05–10 Order 1000 Interregional Compliance to be effective 10/1/2013.

Filed Date: 5/10/13.

Accession Number: 20130510–5158.

Comments Due: 5 p.m. ET 6/24/13.

Docket Numbers: ER13–1471–000.

Applicants: Cheyenne Light, Fuel and Power Company.

Description: Order No. 1000 Compliance Filing to be effective 10/1/2013.

Filed Date: 5/10/13.

Accession Number: 20130510–5159.

Comments Due: 5 p.m. ET 6/24/13.

Docket Numbers: ER13–1472–000.

Applicants: Black Hills Power, Inc.

Description: Order No. 1000 Interregional Compliance Filing to be effective 10/1/2013.

Filed Date: 5/10/13.
Accession Number: 20130510–5160.
Comments Due: 5 p.m. ET 6/24/13.
Docket Numbers: ER13–1473–000.
Applicants: PacifiCorp.
Description: OATT Order 1000 Interregional Compliance Filing to be effective 10/1/2013.
Filed Date: 5/10/13.
Accession Number: 20130510–5161.
Comments Due: 5 p.m. ET 6/24/13.
Docket Numbers: ER13–1474–000.
Applicants: Black Hills/Colorado Electric Utility Company, LP.
Description: Order No. 1000 Compliance Filing to be effective 10/1/2013.
Filed Date: 5/10/13.
Accession Number: 20130510–5162.
Comments Due: 5 p.m. ET 6/24/13.
Docket Numbers: ER13–1476–000.
Applicants: The Connecticut Light and Power Company.
Description: Notice of Cancellation of Watertown Renewable Power, LLC Amended and Restated Preliminary Design Services Agreement.
Filed Date: 5/10/13.
Accession Number: 20130510–5180.
Comments Due: 5 p.m. ET 5/31/13.
Docket Numbers: ER13–1477–000.
Applicants: Public Service Company of New Hampshire.
Description: Public Service Company of New Hampshire submits Notice of Cancellation of Noble Granite Reliable Wind Park Amended and Restated Design, Engineering and Procurement Agreement.
Filed Date: 5/10/13.
Accession Number: 20130510–5181.
Comments Due: 5 p.m. ET 5/31/13.
Docket Numbers: ER13–1478–000.
Applicants: The Connecticut Light and Power Company.
Description: The Connecticut Light and Power Company submit Notice of Cancellation of GenConn Middletown LLC Engineering Agreement for Switchyard Design Basis Manual.
Filed Date: 5/10/13.
Accession Number: 20130510–5182.
Comments Due: 5 p.m. ET 5/31/13.
Docket Numbers: ER13–1479–000.
Applicants: Public Service Company of New Hampshire.
Description: Public Service Company of New Hampshire submits Notice of Cancellation of Indeck Energy-Alexandria, LLC Design, Engineering and Procurement Agreement.
Filed Date: 5/10/13.
Accession Number: 20130510–5183.
Comments Due: 5 p.m. ET 5/31/13.
Docket Numbers: ER13–1480–000.
Applicants: The Connecticut Light and Power Company.
Description: The Connecticut Light and Power Company submits Notice of Cancellation of Waterbury Generation, LLC Design, Engineering and Procurement Agreement for Baldwin Substation Improvements.
Filed Date: 5/10/13.
Accession Number: 20130510–5184.
Comments Due: 5 p.m. ET 5/31/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 13, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–11901 Filed 5–17–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1414–004; ER10–1406–005; ER10–1416–005.
Applicants: Quantum Auburndale Power, LP, Quantum Lake Power, LP, Quantum Pasco Power, LP.
Description: Notification of Non-Material Change in Status of the Quantum Entities.
Filed Date: 5/13/13.
Accession Number: 20130513–5101.
Comments Due: 5 p.m. ET 6/3/13.
Docket Numbers: ER12–1821–002.
Applicants: Colorado Highlands Wind, LLC.
Description: Notification of Non-Material Change in Status of COLORADO HIGHLANDS WIND, LLC.
Filed Date: 5/13/13.
Accession Number: 20130513–5110.
Comments Due: 5 p.m. ET 6/3/13.
Docket Numbers: ER13–1475–000.
Applicants: Massachusetts Electric Company.
Description: Interconnection Agreement Between MECo and Highland Power for Attleboro Landfill to be effective 7/10/2013.
Filed Date: 5/13/13.
Accession Number: 20130513–5000.
Comments Due: 5 p.m. ET 6/3/13.
Docket Numbers: ER13–1481–000.
Applicants: PJM Interconnection, L.L.C.
Description: First Revised Service Agreement No. 3397; Queue No. W2–030 to be effective 4/22/2013.
Filed Date: 5/13/13.
Accession Number: 20130513–5042.
Comments Due: 5 p.m. ET 6/3/13.
Docket Numbers: ER13–1482–000.
Applicants: Southwestern Public Service Company.
Description: 2013–5–13_SPS–DSEC-Sub #1 CA–643–0.1.0–NOC to be effective 5/14/2013.
Filed Date: 5/13/13.
Accession Number: 20130513–5111.
Comments Due: 5 p.m. ET 6/3/13.
Docket Numbers: ER13–1483–000.
Applicants: Florida Power & Light Company.
Description: Florida Power & Light Company submits tariff filing per 35.13(a)(2)(iii: FPL and Orlando Utilities Commission Service Agreement No. 314 to be effective 6/13/2013.
Filed Date: 5/13/13.
Accession Number: 20130513–5150.
Comments Due: 5 p.m. ET 6/3/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 13, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–11902 Filed 5–17–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL13–61–000, QF05–114–005, QF05–116–005, QF05–115–005, QF03–13–006, QF06–289–005, QF06–290–005, QF07–46–005, QF07–53–005, QF07–54–005, QF07–55–005, QF07–56–005, QF07–257–004]

Exelon Corporation, Exelon Wind 1, LLC, Exelon Wind 2, LLC, Exelon Wind 3, LLC, Exelon Wind 4, LLC, Exelon Wind 5, LLC, Exelon Wind 6, LLC, Exelon Wind 7, LLC, Exelon Wind 8, LLC, Exelon Wind 9, LLC, Exelon Wind 10, LLC, Exelon Wind 11, LLC, High Plains Wind Power, LLC v. Xcel Energy Services, Inc., Southwestern Public Service Company; Notice of Complaint and Petition for Enforcement

Take notice that on May 9, 2013, pursuant to sections 206 and 207(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission) 18 CFR 385.206 and 385.207(a)(2), sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824(e) and 825(e), and section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), Exelon Corporation, on behalf of its subsidiaries Exelon Wind 1, LLC, Exelon Wind 2, LLC, Exelon Wind 3, LLC, Exelon Wind 4, LLC, Exelon Wind 5, LLC, Exelon Wind 6, LLC, Exelon Wind 7, LLC, Exelon Wind 8, LLC, Exelon Wind 9, LLC, Exelon Wind 10, LLC, Exelon Wind 11, LLC, and High Plains Wind Power, LLC (Complainants) filed a formal complaint and petition for enforcement requesting that the Commission find that Xcel Energy Services Inc., and its operating subsidiary, Southwestern Public Service Company (Respondents) violated PURPA and Commission's regulations. Complainants requests that the Commission exercise its authority and initiate enforcement action against Respondents.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on May 30, 2013.

Dated: May 13, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–11886 Filed 5–17–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–63–000]

Seminole Electric Cooperative, Inc., and Florida Municipal Power Agency v. Duke Energy Florida, Inc.; Notice of Complaint

Take notice that on May 13, 2013, pursuant to section 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 and sections 206, 306, and 309 of the Federal Power Act, 16 U.S.C. 824(e),825(e), and 825(h), Seminole Electric Cooperative, Inc. and Florida Municipal Power Agency (Complainants) filed a formal complaint against Duke Energy Florida, Inc. (Respondent) alleging that the return on equity (ROE) in the Respondent's transmission formula rate is unjust and unreasonable and should be replaced with a just and reasonable ROE.

The Complainants certifies copies of the complaint were served on the contacts for the Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on June 3, 2013.

Dated: May 14, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–11925 Filed 5–17–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–62–000]

Independent Power Producers of New York, Inc. v. New York Independent System Operator, Inc.

Notice of Complaint

Take notice that on May 10, 2013, Independent Power Producers of New York, Inc. (IPPNY or Complainant) filed a complaint against New York Independent System Operator, Inc. (NYISO or Respondent), pursuant to

sections 206 and 306 for the Federal Power Act, 16 U.S.C. 824e, 825e (2006) and Rule 206, 18 CFR 385.206, of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, alleging that NYISO's Market Administration and Control Area Services Tariff is unjust and unreasonable because it does not include provisions to control the artificial suppression of prices in the New York Control Area capacity markets by existing resources.

IPPNY certifies that copies of the complaint were served on the contacts of New York Independent System Operator, Inc. as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on May 30, 2013.

Dated: May 14, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–11924 Filed 5–17–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2266–000]

Nevada Irrigation District; Notice of Authorization for Continued Project Operation

On April 15, 2011, the Nevada Irrigation District, licensee for the Yuba-Bear Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Yuba-Bear Hydroelectric Project is located on Middle Fork River, Canyon Creek, Fall Creek, Rucker Creek, and Bear River, in Nevada, Placer, and Sierra Counties, California.

The license for Project No. 2266 was issued for a period ending April 30, 2013. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2266 is issued to the licensee for a period effective May 1, 2013 through April 30, 2014 or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before April 30, 2014, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the licensee, Nevada Irrigation District, is authorized to continue operation of the Yuba-Bear Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Dated: May 13, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–11883 Filed 5–17–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2310–000]

Pacific Gas and Electric Company; Notice of Authorization for Continued Project Operation

On April 12, 2011, the Pacific Gas and Electric Company, licensee for the Drum-Spaulding Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Drum-Spaulding Hydroelectric Project is located on South Yuba River, Bear River, North Fork of the North Fork American River, and tributaries of the Sacramento River watershed in Nevada and Placer counties, California.

The license for Project No. 2310 was issued for a period ending April 30, 2013. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b),

to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2310 is issued to the licensee for a period effective May 1, 2013 through April 30, 2014 or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before April 30, 2014, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the licensee, Pacific Gas and Electric Company, is authorized to continue operation of the Drum-Spaulding Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Dated: May 13, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–11884 Filed 5–17–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TS04–277–002]

Green Mountain Power Corporation

Notice of Filing

Take notice that on May 2, 2013, Green Mountain Power Corporation filed additional information in support of its request for continued waiver of Standards of Conduct.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on June 3, 2013.

Dated: May 14, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–11923 Filed 5–17–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–1485–000]

Wheelabrator Baltimore, LP; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Wheelabrator Baltimore, LP's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is June 3, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 14, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–11900 Filed 5–17–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14503–000]

Archon Energy 1, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On February 26, 2013, Archon Energy 1, Inc., filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Kern River Drop 2 and 3 Hydroelectric Project (Kern River Drop 2 and 3 Project or project) to be located on the Kern River, near the city of Bakersfield in Kern County, California. The sole purpose of a preliminary permit, if

issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of two river drop developments. Each of the proposed in-stream installations would consist of the following: (1) A 40-foot-wide concrete diversion canal approximately 150 feet in length; (2) two VLH 4000 turbo-generators; (3) a 10-by-10-foot electrical shack; and (4) appurtenant facilities. The proposed project would have a total installed capacity of 2 megawatts and generate an estimated average annual energy production of 14 gigawatt-hours.

Applicant Contact: Mr. Paul Grist, Archon Energy 1, Inc., 101 E. Kennedy Blvd., Suite 2800, Tampa, Florida 33602, phone: (403) 618–2018.

FERC Contact: Corey Vezina; phone: (202) 502–8598, email: *Corey.vezina@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14503) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: May 14, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–11926 Filed 5–17–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9815–6]

Access to Confidential Business Information by ABT Associates, Incorporated; Perry Johnson Registrars, Inc.; SGS North America, Inc.; SAI Global, Inc.; Orion Registrar, Inc.; NSF–ISR International, and TÜV SÜD America, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Access to Data and Request for Comments.

SUMMARY: EPA will authorize its contractor ABT Associates, Incorporated (ABT) and six (6) auditing organizations: Perry Johnson Registrars, Inc.; SGS North America, Inc.; SAI Global; Orion Registrar, Inc.; NSF–ISR International, and TÜV SÜD America, Inc., also known as the ''Certifying Bodies'', to access Confidential Business Information (CBI) which has been submitted to EPA under the authority of all sections of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended. EPA has issued regulations that outline business confidentiality provisions for the Agency and require all EPA Offices that receive information designated by the submitter, as CBI to abide by these provisions.

DATES: Access to confidential data submitted to EPA will occur no sooner than May 30, 2013.

FOR FURTHER INFORMATION CONTACT: LaShan Haynes, Document Control Officer, Office of Resource Conservation and Recovery, (5305P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, 703–605–0516.

SUPPLEMENTARY INFORMATION:

1. Access to Confidential Business Information

Under EPA Contract No. EP–W–10–10054, Task Order 54, ABT Associates, Incorporated will provide technical support to the Office of Resource Conservation and Recovery (ORCR), Resource Conservation and Sustainability Division (RCSD) as it conducts a study of the implementation of two currently used electronics recycling certification programs in the U.S.: The Responsible Recycling Practices (R2) and e-Stewards Standard for Responsible Recycling and Reuse of Electronic Equipment (e-Stewards). Contractor support from ABT will be required as interviews with stakeholders are conducted; observation of approximately nine (9) audits of electronic recycling facilities being voluntarily performed by the Certifying Bodies, who are authorized to certify the standards. ABT will assist with developing a report identifying the areas of strength in the programs and implementation process and recommend any improvements where appropriate. Some of the data collected voluntarily from the facilities, may be claimed by industry to contain auditing tools, ownership/operation agreements, amounts and types of e-waste processed; and environmental health and safety plans; and asset destruction methods and policies. In accordance with the provisions of 40 CFR part 2, subpart B, ORCR has established policies and procedures for handling information collected from industry, under the authority of RCRA, including RCRA Confidential Business Information Security Manuals. ABT Associates, Incorporated shall protect from unauthorized disclosure all information designated as confidential and shall abide by all RCRA CBI requirements, including procedures outlined in the RCRA CBI Security Manual. The U.S. Environmental Protection Agency has issued regulations (40 CFR Part 2, Subpart B) that outline business confidentiality provisions for the Agency and require all EPA Offices that receive information designated by the submitter as CBI to abide by these provisions. ABT Associates, Incorporated and the Certifying Bodies will be authorized to have access to RCRA CBI under the EPA ''Contractor Requirements for the Control and Security of RCRA Confidential Business Information Security Manual.''

EPA is issuing this notice to inform all submitters of information under all sections of RCRA that ABT Associates, Incorporated, and the Certifying Bodies, under the contract may have access to RCRA CBI. Access to RCRA CBI under this contract will take place at ABT Associates facility located in Bethesda, Maryland, and when necessary, EPA Headquarters only. Contractor personnel at each location will be required to sign non-disclosure agreements and will be briefed on appropriate security

procedures before they are permitted access to confidential information.

Dated: May 1, 2013.

Suzanne Rudzinski,

Director, Office of Resource Conservation & Recovery.

[FR Doc. 2013–11975 Filed 5–17–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0645; FRL–9531–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Nitric Acid Plants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (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 collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before June 19, 2013.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2012–0645, to: (1) EPA online, using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: 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: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@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 October 17, 2012 (77 FR 63813), 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 both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2012–0645, which is available for either public viewing online at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center 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 Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to either 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 *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidentiality of 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: NSPS for Nitric Acid Plants (Renewal).

ICR Numbers: EPA ICR Number 1056.11, OMB Control Number 2060–0019.

ICR Status: This ICR is scheduled to expire on June 30, 2013. Under OMB regulations, the Agency may continue to either conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 60, subparts G and Ga. Owners or operators of the affected facilities must submit an initial notification report, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are required semiannually at a minimum.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 36 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: Owners or operators of nitric acid plants.

Estimated Number of Respondents: 26.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 1,921.

Estimated Total Annual Cost: $2,805,032, which includes $186,049 in labor costs, $162,612 in capital/startup costs, and $2,456,371 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is an increase in burden from the most recently-approved ICR. The increase is due to a program change associated with the promulgation of a new standard at 40 CFR part 60, subpart Ga, which affects new nitric acid production units that are constructed, reconstructed, or modified on or after October 14, 2011. The previous ICR reflected burden associated with subpart G only, while this ICR combines the burden for both subpart G and subpart Ga. This results in an increase in overall burden for both the respondents and the Agency.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–11930 Filed 5–17–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before July 19, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0874.

Title: FCC Form 2000 A through H, FCC Form RDA, FCC Form 475–B, FCC Form 1088 A through H, and FCC Form 501—Consumer Complaint Forms: General Complaints, Obscenity or Indecency Complaints, Complaints under the Telephone Consumer Protection Act, and Slamming Complaints.

Form Number: FCC Form 2000 A through H, FCC Form RDA, FCC Form 475–B, FCC Form 1088 A through H, and FCC Form 501.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit entities; Not-for-profit institutions; State, local or Tribal Government.

Number of Respondents and Responses: 315,413 respondents; 315,913 responses.

Estimated Time per Response: .25 hours (15 minutes) to .50 hours (30 minutes).

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Voluntary.

Total Annual Burden: 151,047 hours.

Total Annual Cost: None.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's updated system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries,'' which became effective on January 25, 2010.

Privacy Impact Assessment: The FCC completed a Privacy Impact Assessment (PIA) on June 28, 2007. The PIA may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html*≤. The FCC is in the process of updating the PIA to incorporate various revisions made to the SORN.

Needs and Uses: The Commission consolidated all of the FCC complaint forms into a single collection, which allows the Commission to better manage all forms used to collect informal consumer complaints. This revised information collection requests OMB approval for the minor adjustments needed for the filing of informal complaints alleging violations of the accessibility requirements of section 255 (telecommunications services and equipment), section 716 (advanced communications services or equipment), and section 718 (Internet browsers on mobile phones) of the Communications Act of 1934 (the Act), as amended, and the Commission's regulations implementing those provisions. 47 U.S.C. 618; 47 CFR 14.30–14.52. Pursuant to the new enforcement rules that will go into effect on October 8, 2013, informal complaints alleging violations of section 255 of the Act will no longer be filed on FCC Form 2000C. Instead, informal complaints alleging violations of sections 255, 716, or 718 of the Act will be filed on new FCC Form 2000H. In addition, a new Request for Dispute Assistance form (FCC Form RDA) will be used to initiate the 30-day period that must precede the filing of these informal complaints. The burdens associated with filing the new 2000H and RDA forms were contained in and have been extracted from the collection found in OMB control number 3060–1167. All information collection burdens associated with submission of FCC complaint forms, including modification of the 2000C form and the creation of the new 2000H and RDA forms, are consolidated into the collection found in OMB control number 3060–0874.

OMB Control Number: 3060–1167.

Title: Accessible Telecommunications and Advanced Communications Services and Equipment.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Businesses or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 9,549 respondents; 119,816 responses.

Estimated Time per Response: .50 hours (30 minutes) to 40 hours.

Frequency of Response: Annual, one time, and on occasion reporting requirements; recordkeeping requirement; third-party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in sections 1–4, 255, 303(r), 403, 503, 716, 717, and 718 of the Communications Act, as amended, 47 U.S.C. 151–154, 255, 303(r), 403, 503, 617, 618, and 619.

Total Annual Burden: 409,371 hours.

Total Annual Cost: $291,488.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries,'' which became effective on January 25, 2010. In addition, upon the service of an informal or formal complaint, a service provider or equipment manufacturer must produce to the Commission, upon request, records covered by 47 CFR 14.31 of the Commission's rules and may assert a statutory request for confidentiality for these records. All other information

submitted to the Commission pursuant to Subpart D of Part 14 of the Commission's rules or to any other request by the Commission may be submitted pursuant to a request for confidentiality in accordance with 47 CFR 0.459 of the Commission's rules.

Privacy Impact Assessment: The FCC completed a Privacy Impact Assessment (PIA) on June 28, 2007. The PIA may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy_Impact_Assessment.html.* The FCC is in the process of updating the PIA to incorporate various revisions made to the SORN.

Needs and Uses: On October 7, 2011, in document FCC 11–151, the FCC released a Report and Order adopting final rules to implement sections 716 and 717 of the Communications Act of 1934 (the Act), as amended, which were added to the Act by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA). *See* Public Law 111–260, 104. Section 716 of the Act requires providers of advanced communications services and manufacturers of equipment used for advanced communications services to make their services and equipment accessible to individuals with disabilities, unless doing so is not achievable. 47 U.S.C. 617. Section 717 of the Act establishes new recordkeeping requirements and enforcement procedures for service providers and equipment manufacturers that are subject to sections 255, 716, and 718 of the Act. 47 U.S.C. 618. Section 255 of the Act requires telecommunications and interconnected VoIP services and equipment to be accessible, if readily achievable. 47 U.S.C. 255. Section 718 of the Act requires web browsers included on mobile phones to be accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable. 47 U.S.C. 619.

Among other things, the FCC established procedures in document FCC 11–151 to facilitate the filing of formal and informal complaints alleging violations of sections 255, 716, or 718 of the Act. Those procedures include a nondiscretionary pre-filing notice procedure to facilitate dispute resolution. As a prerequisite to filing an informal complaint, complainants must first request dispute assistance from the Consumer and Governmental Affairs Bureau's Disability Rights Office.

Pursuant to the new enforcement rules that will go into effect on October 8, 2013, these informal complaints will be filed on a new FCC Form 2000H. In addition, a new Request for Dispute Assistance form (FCC Form RDA) will be used to initiate the 30-day period which must precede the filing of an informal complaint. The burdens associated with filing the new 2000H and Request for Dispute Assistance forms are contained in the collection found in OMB control number 3060–0874. Therefore, the Commission extracted those burdens from the collection found in OMB control number 3060–1167. In addition, the Commission has revised its estimate of the number of requests for dispute assistance and the number of informal complaints that it expects to receive and the burdens associated with the processing and handling of those requests and complaints.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2013–11879 Filed 5–17–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–19606–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). The ICR is for extending the use of the approved information collection assigned OMB control number 0990–0221, which expires on January 31, 2014. Prior to submitting that ICR to OMB, OS seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before July 19, 2013.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–19606–60D for reference.

Information Collection Request Title: Family Planning Annual Report: Forms and Instructions

OMB No.: 0990–0221

Abstract: The Office of Population Affairs (OPA), Office of the Assistant Secretary for Health (OASH), U.S. Department of Health and Human Services (HHS) administers and oversees the Title X Family Planning Program. The Family Planning Annual Report (FPAR) is an annual reporting requirement for family planning services delivery projects (''Title X service grantees'') authorized and funded by the Title X Family Planning Program [''Population Research and Voluntary Family Planning Programs'' (Pub. L. 91–572)], which was enacted in 1970 as Title X of the Public Health Service Act (Section 1001 of Title X of the Public Health Service Act, 42 United States Code 300). The Title X Family Planning Program is the only Federal grant program dedicated solely to providing individuals with comprehensive family planning and related preventive health services. The program's purpose is to assist individuals in determining the number and spacing of their children and is designed to provide access to contraceptive services, supplies, and information to all who want and need them. By law, priority is given to persons from low-income families (Section 1006[c] of Title X of the Public Health Service Act, 42 U.S.C. 300). The FPAR is the only source of annual, uniform reporting by all Title X service grantees. The FPAR provides consistent, national-, regional-, state-, and grantee-level data on the services provided and the characteristics of the individuals served. Note that there are no changes to the FPAR except minor corrections or clarifications to submission and reporting instructions or definitions. The estimated average hour burden has been reduced to 36 hours, which is 4 hours lower than the 40-hour estimate of the previous OMB submission.

Need and Proposed Use of the Information: OPA uses FPAR data to monitor compliance with statutory requirements and accountability and federal performance requirements for Title X family planning funds as required by the 1993 Government Performance and Results Act (GPRA) and HHS, to guide financial and program planning and evaluation, and to respond to inquiries about the program from policymakers and Congress.

Likely Respondents: Title X service grantees.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN-HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Family Planning Annual Report: Forms and Instructions	93	1	36	3,348
Total	93	1	36	3,348

OS specifically requests comments on (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.

Keith A. Tucker,

Information Collection Clearance Officer.

[FR Doc. 2013–11949 Filed 5–17–13; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Informational Meeting Concerning Compliance With the Centers for Disease Control and Prevention's Import Permit Program; Public Webcast

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public webcast.

SUMMARY: The Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS) announces a public webcast that will address the new import permit regulations for infectious biological agents, standards, and vectors; import permit inspections; and import permit exemptions. The purpose of this notice is to inform all interested parties, including those individuals and entities already possessing an import permit of the webcast.

DATES: The webcast will be held on Friday, July 12, 2013 from 1 p.m. to 5 p.m. EST. Those wishing to join the webcast are encouraged to register by July 5, 2013. Registration instructions are found on the HHS/CDC's Import Permit Program Web site, *http://www.cdc.gov/od/eaipp/index.htm.*

ADDRESSES: The webcast will be broadcast from the Centers for Disease Control and Prevention, 1600 Clifton Road NE., Atlanta, Georgia 30329.

FOR FURTHER INFORMATION CONTACT: Von McClee, Division of Select Agents and Toxins, Office of Public Health Preparedness and Response, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS A–46, Atlanta, GA 30333; phone: 404–718–2000; email: *lrsat@cdc.gov.*

SUPPLEMENTARY INFORMATION: On February 4, 2013, the Centers for Disease Control and Prevention (CDC) in the Department of Health and Human Services (HHS) published a final rule (78 FR 7674) amending etiological importation regulations to (1) clarify import permit regulatory definitions, (2) increase oversight by implementing inspections, (3) address exemptions and (4) describe the appeal process.

This webcast is an opportunity for the regulated community (i.e., academic institutions and biomedical centers, commercial manufacturing facilities, federal, state, and local laboratories, including clinical and diagnostic laboratories, research facilities, exhibition facilities, and educational facilities) and other interested individuals to obtain specific regulatory guidance and information regarding the newly amended regulations. The webcast will also provide assistance to those interested in applying for an etiological agent import permit. Representatives from HHS/CDC will be present during the webcast to address questions and concerns from the web participants.

Topics to be discussed during the webcast include: The new import permit regulations for infectious biological agents, standards, and vectors; import permit inspections; and import permit exemptions. A question and answer session will take place after each topic.

Individuals wishing to join the webcast are encouraged to register by July 5, 2013. Instructions for registration are found on the HHS/CDC's Import Permit Program Web site, *http://www.cdc.gov/od/eaipp/index.htm.* This is a webcast only event and there will be no on-site participation at the HHS/CDC broadcast facility. In-person participation cannot be accommodated. Closed-captioning video of the webcast will be available at *http://www.cdc.gov/od/eaipp/index.htm* after the webcast.

Dated: May 14, 2013.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2013–11895 Filed 5–17–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Pediatrics Subcommittee.

Date: June 13, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rita Anand, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–496–1487, *anandr@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Obstetrics and Maternal-Fetal Biology Subcommittee.

Date: June 26, 2013.

Time: 8:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter Zelazowski, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6902, *peter.zelazowski@nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Population Sciences Subcommittee.

Date: June 13–14, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, Calvert I and II, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Carla T. Walls, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–7510, 301–435–6898, *wallsc@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Health, Behavior, and Context Subcommittee.

Date: June 18, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Michele C. Hindi-Alexander, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–8382, *hindialm@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; CHHD–C Developmental Biology Subcommittee.

Date: June 20–21, 2013.

Time: 8:00 a.m. to 5:00 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: Cathy J. Wedeen, Ph.D., Scientific Review Officer, Division of Scientific Review, OD, Eunice Kennedy Shriver National Institute of Child Health And Human Development, NIH, 6100 Executive Blvd., Room 5B01–G, Bethesda, MD 20892, 301–435–6878, *wedeenc@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Biobehavioral and Behavioral Sciences Subcommittee.

Date: June 27, 2013.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Marita R. Hopmann, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health And Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 14, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–11859 Filed 5–17–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: June 11–12, 2013.

Time: June 11, 2013, 8:00 a.m. to 5:30 p.m.

Agenda: The NIH Recombinant DNA Advisory Committee (RAC) will review and discuss selected human gene transfer protocols and related data management activities. The detailed, Draft agenda for the meeting is available on the OBA Web site, RAC Meeting page at this URL: *http://oba.od.nih.gov/rdna_rac/rac_meetings.html*).

Place: National Institutes of Health, Building 31C, 6th Floor, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Time: June 12, 2013, 8:00 a.m. to 3:15 p.m.

Agenda: The NIH Recombinant DNA Advisory Committee (RAC) will review and discuss selected human gene transfer protocols and related data management activities. The detailed, Draft agenda for the meeting is available on the OBA Web site, RAC Meeting page at this URL: *http://oba.od.nih.gov/rdna_rac/rac_meetings.html*).

Place: National Institutes of Health, Building 31C, 6th Floor, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Chezelle George, Office of Biotechnology Activities, Office of Science Policy/OD, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892, 301–496–9838, *georgec@od.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.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://oba.od.nih.gov/rdna/rdna.html,* where an agenda and any additional information for the meeting will be posted when available.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these

programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: May 14, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–11864 Filed 5–17–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; ''NIAID Investigator Initiated Program Project Applications'' (P01).

Date: June 10, 2013.

Time: 11:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Jay R. Radke, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 2217, 6700B Rockledge Drive MDS–7616, Bethesda, MD 20892–7616, (301) 496–2550, *jay.radke@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Clinical Trials Units for NIAID Networks.

Date: June 13, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Fernwood Building, 2C21/13, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Raymond R. Schleef, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 451–3679, *schleefrr@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 14, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–11856 Filed 5–17–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 Nursing Research Initial Review Group.

Date: June 10–11, 2013.

Time: 8:00 a.m. to 1:00 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: Weiqun Li, MD, Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd., Ste. 710, Bethesda, MD 20892, (301) 594–5966, *wli@mail.nih.gov.*

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; Microbiome on Preterm Labor and Delivery.

Date: June 27, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Tamizchelvi Thyagarajan, Ph.D., Scientific Review Officer, National Institute of Nursing Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–0343, *tamizchelvi.thyagarajan@nih.gov.*

Name of Committee: National Institute of Nursing Research Special Emphasis Panel; Scholars Training for the Advancement of Research (STAR).

Date: June 28, 2013.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Mario Rinaudo, MD, Scientific Review Officer, Office of Review, National Inst of Nursing Research, National Institutes of Health, 6701 Democracy Blvd. (DEM 1), Suite 710, Bethesda, MD 20892, 301–594–5973, *mrinaudo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: May 14, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–11863 Filed 5–17–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–13–

008 Shared Instrumentation Grant Program: Biomolecular Interaction Analysis Instruments.

Date: June 12, 2013.

Time: 11:30 a.m. to 2:30 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: Stephen M. Nigida, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301–435–1222, *nigidas@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Musculoskeletal Tissue Engineering Study Section.

Date: June 13, 2013.

Time: 8:00 a.m. to 6:00 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: Baljit S Moonga, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7806, Bethesda, MD 20892, 301–435–1777, *moongabs@mail.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Diseases and Pathophysiology of the Visual System Study Section.

Date: June 17–18, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: Nataliya Gordiyenko, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, 301.435.1265, *gordiyenkon@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Developmental Therapeutics Study Section.

Date: June 17, 2013.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, 1515 Rhode Island Ave. NW., Washington, DC 20005.

Contact Person: Sharon K Gubanich, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 408–9512, *gubanics@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Hepatobiliary Pathophysiology Study Section.

Date: June 17, 2013.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Rex, 562 Sutter Street, San Francisco, CA 94102.

Contact Person: Bonnie L Burgess-Beusse, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, 301–435–1783, *beusseb@mail.nih.gov.*

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Cancer Molecular Pathobiology Study Section.

Date: June 17–18, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Manzoor Zarger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 14, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–11853 Filed 5–17–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Maintenance and Operation of a Medicinal Chemistry Facility

Date: June 10, 2013.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Rockville, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 14, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–11860 Filed 5–17–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Environmental Health Sciences Special Emphasis Panel, June 6, 2013, 08:00 a.m. to June 6, 2013, 05:00 p.m., Hilton Garden Inn Durham Southpoint Hotel, 7007 Fayetteville Road, Durham, NC 27713 which was published in the **Federal Register** on May 8, 2013, 78 FR 89.

The meeting notice is amended to change the date of the meeting from June 6, 2013 to July 15, 2013 and to change the meeting location from the Hilton Garden Inn Durham Southpoint Hotel to the DoubleTree by Hilton Hotel. The meeting is closed to the public.

Dated: May 14, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–11861 Filed 5–17–13; 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 Resource-Related Research Project for Molecular Imaging.

Date: June 12, 2013.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Melissa E Nagelin, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892, 301–435–0297, *nagelinmh2@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; K23, K24, K25 Research Career Development Awards.

Date: June 13–14, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Stephanie J Webb, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892, 301–435–0291, *stephanie.webb@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Asthma and Inflammation.

Date: June 13, 2013.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

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: May 14, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–11854 Filed 5–17–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Pregnancy Adaptation and Maternal Cardiovascular Health.

Date: May 23, 2013.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: David H. Weinberg, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5b01, Rockville, MD 20852, 301–435–6973, *David.Weinberg@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Function, Integration, and Rehabilitation Sciences Subcommittee.

Date: June 3, 2013.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Anne Krey, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5b01, Bethesda, MD 20892, 301–435–6908, *ak41o@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 14, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–11857 Filed 5–17–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2012–0046]

Protected Critical Infrastructure Information (PCII) Office Self-Assessment Questionnaire

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 30-day notice and request for comments;

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP), Infrastructure Information Collection Division (IICD), Protected Critical Infrastructure Information (PCII) Program will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). NPPD is soliciting comments concerning New Information Collection Request, PCII Officer Questionnaire. DHS previously published this ICR in the **Federal Register** on November 26, 2012, for a 60-day public comment period. DHS received no comments. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until 30 days after date of publication in the **Federal Register**. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to OMB Desk Officer, Department of Homeland Security, Office of Civil Rights and Civil Liberties. Comments must be identified by DHS–2012–0046 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Email: oira_submission@omb.eop.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 395–5806.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: Barbara Forrest DHS/NPPD/IP/PCII, *barbara.forrest@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: The PCII Program was created by Congress under the Critical Infrastructure Information Act of 2002, (Sections 211–215, Title II, Subtitle B of the Homeland Security Act of 2002, Pub. L. 107–296) (CII Act) to encourage voluntary information sharing by owners and operators of critical infrastructure and protected systems. The PCII Program is implemented by 6 CFR Part 29, Procedures for Handling Critical Infrastructure Information; Final Rule (the Regulation), which was issued in 2006. PCII refers to validated and marked critical infrastructure information not customarily in the public domain and related to the security of critical infrastructure or protected systems, which is voluntarily submitted to DHS for homeland security purposes. The PCII Program offers several protections for information validated as PCII. The PCII Program is administered by DHS/NPPD/IP/IICD. The PCII Program is responsible for ensuring compliance with the Regulation's uniform procedures for the handling, use, dissemination, and safeguarding of PCII. In this capacity, the PCII Program oversees a community of stakeholders, including submitters of critical infrastructure information, authorized users of PCII and accredited Federal, state and local entities with homeland security duties. The PCII Program is required by its authorizing regulation to assist the Officers in overseeing their own accredited PCII programs at the state and local level. *See* 6 CFR 29.4(d). This questionnaire is designed to gather information from PCII Officers that can be used to assess their programs, their compliance with PCII rules and requirements, and the specific needs of their accredited programs. This will help the DHS PCII Program to ensure that PCII is being properly protected and avoid any improper disclosures, which would severely harm the Program, given PCII's voluntary nature.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Information Collection Division, Protected Critical Infrastructure Information Program.

Title: Protected Critical Infrastructure Information (PCII) Office Self-Assessment Questionnaire.

OMB Number: 1670–NEW.

Frequency: Annually.

Affected Public: PCII Officers.

Number of Respondents: 80 (estimate).

Estimated Time per Respondent: One hour.

Total Burden Hours: 80 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0 (This assessment will reside on existing PCII information storage systems).

Total Burden Cost (operating/maintaining): $8,316.

Dated: May 13, 2013.

Scott Libby,

Deputy Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2013–11866 Filed 5–17–13; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Quality Custom Inspections & Laboratories, LLC, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Quality Custom Inspections & Laboratories, LLC, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Quality Custom Inspections & Laboratories, LLC, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of September 18, 2012.

DATES: *Effective Dates:* The accreditation and approval of Quality Custom Inspections & Laboratories, LLC, as commercial gauger and laboratory became effective on September 18, 2012. The next triennial inspection date will be scheduled for September 2015.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Quality Custom Inspections & Laboratories, LLC, 402 Pasadena Blvd., Pasadena, TX 77506, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively,

inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/linkhandler/cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.*

Dated: May 3, 2013.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2013–11855 Filed 5–17–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Inspectorate America Corporation, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of August 29, 2012.

DATES: *Effective Dates:* The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on August 29, 2012. The next triennial inspection date will be scheduled for August 2015.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Inspectorate America Corporation, 12211 Port Road, Seabrook, TX 77586, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.*http://cbp.gov/linkhandler/cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.*

Dated: May 3, 2013.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2013–11851 Filed 5–17–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Inspectorate America Corporation, as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Inspectorate America Corporation, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of August 17, 2011.

DATES: *Effective Dates:* The accreditation and approval of Inspectorate America Corporation, as commercial gauger and laboratory became effective on August 17, 2011. The next triennial inspection date will be scheduled for August 2014.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Inspectorate America Corporation, 101 Widgeon Drive, St. Rose, LA 70097 (formerly 628 Time Saver Lane, Harahan, LA 70123), has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/linkhandler/cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.*

Dated: May 3, 2013.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2013–11848 Filed 5–17–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Columbia Inspection, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Columbia Inspection, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Columbia Inspection, Inc., has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for

customs purposes for the next three years as of May 16, 2012.

DATES: *Effective Dates:* The accreditation and approval of Columbia Inspection, Inc., as commercial gauger and laboratory became effective on May 16, 2012. The next triennial inspection date will be scheduled for May 2015.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Columbia Inspection, Inc., 797 West Channel Street, San Pedro, CA 90731, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/linkhandler/cgov/trade/basic_trade/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.*

Dated: May 3, 2013.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2013–11849 Filed 5–17–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FAC–2013–N109; FXFR133609ANS09–FF09F14000–134]

Aquatic Nuisance Species Task Force; Public Teleconference/Webinar

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a public teleconference/webinar of the Aquatic Nuisance Species Task Force (ANS Task Force). The ANS Task Force's purpose is to develop and implement a program for U.S. waters to prevent introduction and dispersal of aquatic nuisance species; to monitor, control, and study such species; and to disseminate related information.

DATES: *Teleconference/webinar:* Monday June 17, 2013, from 1 p.m. to 4 p.m. EDT. *Deadlines:* For deadlines for registering to listen to the meeting by phone, listening and viewing on the Internet, and providing public comment by phone, please see ''Public Input'' under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: You may participate in the teleconference/webinar from your home or work computer or phone.

FOR FURTHER INFORMATION CONTACT: Susan Mangin, Executive Secretary, ANS Task Force, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203; telephone: 703–358–2466; email: *Susan_Mangin@fws.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the ANS Task Force will hold a teleconference/webinar.

Background

The ANS Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Act) (Pub. L. 106–580, as amended) and is composed of 13 Federal and 13 ex-officio members and co-chaired by the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration. The ANS Task Force provides advice on aquatic nuisance species infesting waters of the U.S. and other nations, among other duties as specified in the Act.

Meeting Agenda

- Classroom Guidelines,
- National Invasive Species Awareness Week,
- Michigan and Mississippi ANS Management Plans, and
- Asian Carp Surveillance Plan

The final agenda and other related meeting information will be posted on the ANS Task Force Web site at *http://www.anstaskforce.gov.*

Public Input

If you wish to	You must contact the ANS Executive Secretary (see FOR FURTHER INFORMATION CONTACT) no later than
Listen to the webinar by telephone or listen and view through the Internet	Monday June 3, 2013.
Provide oral public comment by phone	Monday June 3, 2013.

Meeting Minutes

Summary minutes of the teleconference/webinar will be maintained by the Executive Secretary (see **FOR FURTHER INFORMATION CONTACT**). The minutes will be available for public inspection within 60 days after the meeting, and will be posted on the ANS Task Force's Web site at *http://anstaskforce.gov.*

Dated: May 14, 2013.

Jeffrey Underwood,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fish and Aquatic Conservation.

[FR Doc. 2013–11955 Filed 5–17–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO320000 L13100000 DT0000 LXSIOSHL0000]

BLM Director's Response to the Appeal by the Governors of Utah and Wyoming of the BLM Assistant Director's Governor's Consistency Review Determination

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Approved Land Use Plan Amendments/Record of Decision (ROD) for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management (BLM) in Colorado, Utah, and Wyoming was signed by the BLM Principal Deputy Director on March 22, 2013. The ROD constitutes the final decision of the BLM and the Approved Plan Amendments were effective immediately upon its signing. In accordance with its regulations, the BLM is publishing the reasons for rejecting the recommendations of the Governors of Utah and Wyoming regarding the Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah, and Wyoming, which were published as proposed in November, 2012.

FOR FURTHER INFORMATION CONTACT: Sherri Thompson, BLM Project Manager, 303–239–3758, (*sthompso@blm.gov*), Bureau of Land Management, 2850 Youngfield Street, Lakewood, CO 80215 or Mitchell Leverette, BLM Division Chief, Solid Minerals, 202–912–7113, (*mleveret@blm.gov*), Bureau of Land Management, 20 M Street SE., Washington, DC 20003. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The decision in the ROD selects a modified version of Alternative 2(b) from the proposed plan in the Final Oil Shale and Tar Sands Programmatic Environmental Impact Statement, as the Approved Land Use Plan Amendments. The ROD amends 10 land use plans in Colorado, Utah, and Wyoming to make approximately 678,600 acres of lands containing oil shale resources open to application for future leasing and development and approximately 132,100 acres open to application for future leasing and development of tar sands.

In accordance with the regulations at 43 CFR 1610.3–2(e), the BLM submitted the Proposed Plan Amendments on November 8, 2012, to the Governors of Colorado, Utah, and Wyoming for a 60-day Governors Consistency Review in order for the Governors to review the Proposed Plan Amendments and identify any inconsistencies with State plans, policies, or programs. The 60-day review period ended on January 9, 2013. The BLM received letters from the Governors of Utah and Wyoming detailing inconsistencies with State and local plans, policies, and programs. These letters are available at *http://ostseis.anl.gov*. Both Governors expressed reservations about the BLM's proposal to close to oil shale and tar sands leasing and development lands the BLM has identified as having wilderness characteristics and, in Utah, lands identified as occupied Greater Sage-grouse (GSG) habitat. The Governor of Utah expressed concern that the BLM's proposal would limit opportunities for economic development; the Governor of Wyoming included in his letter comments from certain county governments in Wyoming expressing similar concerns. As the BLM proposed to leave open to oil shale leasing and development (GSG) habitat on public lands in Wyoming, the Governor of Wyoming recommended that protective stipulations be adopted in the land use plan amendments. After careful consideration of the concerns raised by the two States, the Assistant Director decided not to adopt the recommendations raised by the Governors. Copies of the February 6, 2013, letters from the Assistant Director to the Governors are also available at *http://ostseis.anl.gov*.

On March 7, 2013, the Governors of Utah and Wyoming, respectively, appealed the Assistant Director's decision to the BLM Director. On March 22, 2013, the BLM Principal Deputy Director issued a final response to the Governors detailing the reasons for rejecting the recommendations. Copies of both the incoming appeal letters from the Governors and the outgoing BLM response are available at *http://ostseis.anl.gov*. Pursuant to 43 CFR 1610.3–2(e), the following describes the reasons for the BLM's decision.

This planning initiative is a targeted plan amendment process that addresses only the management of oil shale and tar sands resources. The ROD makes only land use allocation decisions that do not authorize any future leasing or development. The Approved Plan Amendments reflect the BLM's determination that because of the nascent character of the oil shale and tar sands technologies, a measured approach should be taken to oil shale and tar sands leasing and development. This approach is intended to ensure that commercial viability is proven, and the environmental consequences of these technologies known, before any commitment is made to broad-scale development, which may impact other resource values. Consistent with this approach, the BLM is closing lands that have been identified as having wilderness characteristics from future oil shale and tar sands leasing and development. For the same reason, the BLM is closing occupied (GSG) habitat in Utah. The BLM, the United States Fish and Wildlife Service (USFWS), and the State of Utah are still in the process of coordinating management of this resource, and the occupied habitat maps relied on in this oil shale/tar sands planning initiative represent the best information available to depict areas warranting protection at this early stage of the oil shale and tar sands industries. We recognize that Utah has recently submitted to the BLM its Conservation Plan for GSG; however, until the USFWS and the BLM complete their review of Utah's Conservation Plan in accordance with the BLM National Greater Sage-Grouse Planning Strategy, the State's occupied habitat map represents the best source of information regarding (GSG) habitat.

By contrast, in Wyoming, interagency coordination regarding sage-grouse habitat is at a different stage. In Wyoming, the USFWS has concurred with the Wyoming Governor's Executive Order (EO) 2011–5, and the EO has been adopted in relevant part by the Wyoming BLM in accordance with the guidance issued in the BLM Washington Office Instruction Memorandum No. 2012–43. Under the Approved Plan Amendments, the BLM is not excluding from potential oil shale leasing and development (GSG) habitat, but instead, similar to the State of Wyoming's own approach, will consider adopting protective measures at the time it considers lease issuance, if warranted on the basis of environmental review conducted at that time. Because this ROD approves land use allocation decisions that do not authorize any future leasing or development, site-specific issues, including, but not

limited to, protection of sage-grouse habitat, will be resolved at the lease sale and development stages of the process.

The BLM has made minor modifications and editorial clarifications to the Approved Plan Amendments. These modifications provided further clarification of some of the decisions. Because the Governor of Colorado did not submit a letter, the Proposed Plan Amendments are presumed to be consistent with State plans, policies, and programs in that State.

Authority: 40 CFR 1506.6, 43 CFR 1610.3–2.

Michael D. Nedd,

Assistant Director, Minerals and Realty Management.

[FR Doc. 2013–11994 Filed 5–17–13; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000–L63100000–HD0000–13XL1165AF: HAG13–0197]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management, Oregon State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 40 S., R. 8 W., accepted May 1, 2013

Washington

T. 26 N., Rs. 13 & 14 W., accepted May 1, 2013
T. 32 N., R. 15 W., accepted May 1, 2013
T. 33 N., R. 14 W., accepted May 1, 2013
T. 33 N., R. 15 W., accepted May 1, 2013

ADDRESSES: A copy of the plats may be obtained from the Public Room at the Bureau of Land Management, Oregon State Office, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6132, Branch of Geographic Sciences, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: A person or party who wishes to protest against this survey must file a written notice with the Oregon State Director, Bureau of Land Management, stating that they wish to protest. A statement of reasons for a protest may be filed with the notice of protest and must be filed with the Oregon State Director within thirty days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved.

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.

Timothy J. Moore,

Acting Chief Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2013–11910 Filed 5–17–13; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–12980; PPWOCRADI0, PCU00RP14.R50000]

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 April 27, 2013. Pursuant to § 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 June 4, 2013. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 1, 2013.

Alexandra Lord,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

ALABAMA

Jackson County

Skyline Commissary, (Skyline Farms Resettlement Project, Jackson County, Alabama MPS) NE. corner of jct. of Cty. Rds., 25 & 107, Scottsboro, 13000365

LOUISIANA

Rapides Parish

Alexandria Post-War Suburbs Historic District, Bounded by Bayou Hynson, Darby, Texas & Elliott Sts., Alexandria, 13000366

MASSACHUSETTS

Barnstable County

Cobb Memorial Library, 13 Truro Center Rd., Truro, 13000367

MISSOURI

St. Louis Independent city

O'Fallon Park Historic District, Roughly bounded by Newstead, Pope, Florissant, Harris, Algernon, Adelaide, Warne, Green Lea, Fair & Lee Aves., St. Louis, 13000368

MONTANA

Yellowstone County

Northern Hotel, 19 N. Broadway, Billings, 13000369

NEW YORK

Erie County

Tonawanda Municipal Building, 2919 Delaware Ave., Kenmore, 13000370

Ontario County

Knights of the Maccabees Hall, 4270 NY 21, Cheshire, 13000371

Steuben County

First Baptist Society of Bath, The, (Bath Village MRA) 14 Howell St., Bath, 13000372

Suffolk County

Cherry Grove Community House and Theatre, 180 Bayview Walk, Cherry Grove, 13000373

VERMONT

Windsor County

Beaver Meadow School, (Educational Resources of Vermont MPS) 246 Chapel Hill Rd., Norwich, 13000374

Root School, (Educational Resources of Vermont MPS) 987 Union Village Rd., Norwich, 13000375

WISCONSIN

Walworth County

Whitewater Passenger Depot, 301 W. Whitewater St., Whitewater, 13000376

A request for removal has been made for the following resources:

ARKANSAS

Hempstead County

Columbus Presbyterian Church, AR 73, Columbus, 82000823

Hot Spring County

Bethel African Methodist Episcopal Church, 519 W. Page St., Malvern, 04000496

[FR Doc. 2013–11890 Filed 5–17–13; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0030]

Agency Information Collection Activities: Proposed Renewal of Previously Approved Collection; Comments Requested; Electronic Applications for the Attorney General's Honors Program and the Summer Law Intern Program

ACTION: 30-Day Notice.

The Department of Justice (DOJ), Justice Management Division, Office of Attorney Recruitment and Management (OARM), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 78, Number 48, Page 15739, on March 12, 2013, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment June 19, 2013. This process is conducted in accordance with 5 CFR 1320.10.

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 Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the 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:* Renewal of a Currently Approved Collection.

(2) *The title of the form/collection:* Electronic Applications for the Attorney General's Honors Program and the Summer Law Intern Program.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: none. Office of Attorney Recruitment and Management, Justice Management Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: None. The application form is submitted voluntarily, once a year by law students and recent law school graduates (e.g., judicial law clerks) who will be in this applicant pool only once;

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 5000 respondents will complete the application in approximately 1 hour per application, plus an estimated 600 respondents (candidates selected for interviews) who will complete a travel survey used to schedule interviews and prepare official Travel Authorizations prior to the interviewees' performing pre-employment interview travel (as defined by 41 CFR 301–1.3), as needed, in approximately 10 minutes per form, plus an estimated 400 respondents who will complete a Reimbursement Form (if applicable) in order for the Department to prepare the Travel Vouchers required to reimbursed candidates for authorized costs they incurred during pre-employment interview travel at approximately 10 minutes per form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated revised total annual public burden associated with this application is 5,167 hours.

If additional information is required, please contact Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 1407B, Washington, DC 20530.

Dated: May 15, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–11919 Filed 5–17–13; 8:45 am]

BILLING CODE 4410–PB–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0005]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Application and Permit for Importation of Firearms, Ammunition and Implements of War

ACTION: 60-Day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until July 19, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with

instructions or additional information, please contact Desiree Dickinson, Firearms and Explosives Imports Branch, 244 Needy Road, Martinsburg, West Virginia 25405.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application and Permit for Importation of Firearms, Ammunition and Implements of War.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 6, Part 1 (5330.3A) Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individuals or households, Federal Government, State, Local or Tribal Government.

Need for Collection: The form is used to determine whether firearms, ammunition, and implements of war are eligible for importation into the United States. It is also used to secure authorization to import such articles and serves as authorization to the U.S. Customs Service to allow these articles entry into the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 13,000 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 6,500 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: May 15, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–11920 Filed 5–17–13; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Notice of Charter Reestablishment

In accordance with the provisions of the Federal Advisory Committee Act, Title 5, United States Code, Appendix, and Title 41, Code of Federal Regulations, Section 101–6.1015, with the concurrence of the Attorney General, I have determined that the reestablishment of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB) is in the public interest. In connection with the performance of duties imposed upon the FBI by law, I hereby give notice of the reestablishment of the APB Charter.

The APB provides me with general policy recommendations with respect to the philosophy, concept, and operational principles of the various criminal justice information systems managed by the FBI's CJIS Division.

The APB includes representatives from local and state criminal justice agencies; tribal law enforcement representatives; members of the judicial, prosecutorial, and correctional sectors of the criminal justice community, as well as one individual representing a national security agency; a representative of federal agencies participating in the CJIS Division Systems; and representatives of criminal justice professional associations (i.e., the American Probation and Parole Association; American Society of Crime Laboratory Directors, Inc.; International Association of Chiefs of Police; National District Attorneys' Association; National Sheriffs' Association; Major Cities Chiefs' Association; Major County Sheriffs' Association; and a representative from a national professional association representing the courts or court administrators nominated by the Conference of Chief Justices). The Attorney General has granted me the authority to appoint all members to the APB.

The APB functions solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. The Charter has been filed in accordance with the provisions of the Act.

Dated: May 10, 2013.

Robert S. Mueller, III,

Director.

[FR Doc. 2013–11908 Filed 5–17–13; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision to the ''Report on Occupational Employment and Wages.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before July 19, 2013.

ADDRESSES: Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Carol Rowan, BLS Clearance Officer, at 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Employment Statistics (OES) survey is a Federal/State establishment survey of wage and salary workers designed to produce data on current occupational employment and wages. OES survey data assist in the development of employment and training programs established by the 1998 Workforce Investment Act (WIA) and the Perkins Vocational Education Act of 1998.

The OES program operates a periodic mail survey of a sample of non-farm establishments conducted by all fifty States, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. Over three-year periods, data on occupational employment and wages are collected by industry at the four- and five-digit North American Industry Classification System (NAICS) levels. The Department of Labor uses OES data in the administration of the Foreign Labor Certification process under the Immigration Act of 1990.

II. Current Action

Office of Management and Budget clearance is being sought for the Occupational Employment Statistics (OES) program. Occupational employment data obtained by the OES survey are used to develop information regarding current and projected employment needs and job opportunities. These data assist in the development of State vocational education plans. OES wage data provide a significant source of information to support a number of different Federal, State, and local efforts.

As part of an ongoing effort to reduce respondent burden, OES has several electronic submission options which are available to respondents. Respondents have the ability to submit data by email, or fillable online forms. In many cases, a respondent can submit existing payroll records and would not need to submit a survey form.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- 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.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Report on Occupational Employment and Wages.

OMB Number: 1220–0042.

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local, or Tribal Government.

Total Respondents: 310,068.

Frequency: Semi-annually.

Total Responses: 310,068.

Average Time per Response: 45 minutes.

Estimated Total Burden Hours: 232,550.

Total Burden Cost (capital/startup): $00.00.

Total Burden Cost (operating/maintenance): $00.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 14th day of May 2013.

Kimberley D. Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2013–11889 Filed 5–17–13; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Survey of Occupational Injuries and Illnesses.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before July 19, 2013.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, 202–691–7628 (this is not a toll free number). (See Addresses section.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 24(a) of the Occupational Safety and Health Act of 1970 requires the Secretary of Labor to develop and maintain an effective program of collection, compilation, and analysis of statistics on occupational injuries and illnesses. The Commissioner of Labor Statistics has been delegated the responsibility for ''Furthering the purpose of the Occupational Safety and Health Act by developing and maintaining an effective program of collection, compilation, analysis and publication of occupational safety and health statistics.'' The BLS fulfills this responsibility, in part, by conducting the Survey of Occupational Injuries and Illnesses in conjunction with participating State statistical agencies. The BLS Survey of Occupational Injuries and Illnesses provides the Nation's primary indicator of the progress towards achieving the goal of safer and healthier workplaces. The survey produces the overall rate of occurrence of work injuries and illnesses by industry which can be compared to prior years to produce

measures of the rate of change. These data are used to assess the Nation's progress in improving the safety and health of America's work places; to prioritize scarce Federal and State resources; to guide the development of injury and illness prevention strategies; and to support Occupational Safety and Health Administration (OSHA) and State safety and health standards and research. Data are essential for evaluating the effectiveness of Federal and State programs for improving work place safety and health. For these reasons, it is necessary to provide estimates separately for participating States.

II. Current Action

Office of Management and Budget clearance is being sought for the Survey of Occupational Injuries and Illnesses. The survey measures the overall rate of occurrence of work injuries and illnesses by industry for private industry, State governments, and local governments. For the more serious injuries and illnesses, those with days away from work, the survey provides detailed information on the injured/ill worker (age, sex, race, industry, occupation, and length of service), the time in shift, and the circumstances of the injuries and illnesses classified by standardized codes (nature of the injury/illness, part of body affected, primary and secondary sources of the injury/illness, and the event or exposure which produced the injury/illness).

Beginning with the 2011 survey year, BLS began testing the collection of case and demographic data for injury and illness cases that require only days of job transfer or restriction. Since the BLS previously collected case and demographic data only for cases with days away from work, data were not obtained about this growing class of injury and illness cases. BLS is analyzing the results of this test to determine the value of the resulting information and is looking at how best to implement the collection of these data as well as days away from work cases in future survey years. The BLS regards the collection of these cases with only job transfer or restriction as significant in its coverage of the American workforce.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• 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.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Survey of Occupational Injuries and Illnesses.

OMB Number: 1220–0045.

Affected Public: Businesses or other for-profits; Not-for-profit institutions; Farms; State, Local or Tribal Governments.

Form	Total respondents	Frequency	Total responses	Average time per response (hours)	Estimated total burden
BLS 9300	240,000	Annually	240,000	.375	90,000
Pre-notification Package	182,000 out of 240,000	Annually	182,000 out of 240,000	1.352	246,166
Undercount test					1,950
Totals	240,000	Annually	240,000		338,116

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 8th day of May 2013.

Kimberley Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2013–11834 Filed 5–17–13; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before June 19, 2013.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202–693–9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: George F. Triebsch, Director, Office of Standards, Regulations and Variances. Persons delivering documents are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments

during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2013–019–C.

Petitioner: Peabody Twentymile Mining LLC, Three Gateway Center, Suite 1500, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222.

Mine: Foidel Creek Mine, MSHA I.D. No. 05–03836, located in Routt County, Colorado.

Regulation Affected: 30 CFR 75.1101–7(a) (Installation of water sprinkler systems; requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance with respect to its sprinkler system for its conveyor belts. The petitioner proposes the following alternative for best protection and could be installed in a horizontal position:

1. The pendant spray in its sprinkler system at belt drives and belt take-ups will be oriented for the best level of protection as determined by Twentymile and may be oriented in a horizontal position.

2. The number of sprays on the branch lines may exceed eight and may be positioned at a spacing of less than six feet. The number of sprays is not limited so long as 10 psi is maintained at the furthermost spray.

3. The pressure in the branch lines when tested should be at a minimum of 10 psi. The pressure will not exceed 250 psi when the sprays are operating.

4. Each water sprinkler system will consist of a system with automatic sprinklers located not more than eight feet apart so that the water discharge from the sprinklers will cover 50 feet of flame-resistant belt, or 150 feet of non-flame-resistant belt, adjacent to the belt drive. In addition, automatic sprinklers will be located so that the water discharged from the sprinkler(s) will cover the drive motor(s), entire belt take-up, electrical controls, and gear reducing unit for each belt drive.

5. The residual pressure in each sprinkler system will not be less than 10 psi with any eight sprinklers open. The supply of water will be adequate to provide a constant flow of water for at least ten minutes with all sprinklers functioning.

6. Each water sprinkler system will have a strainer with a flush-out connection and a manual shut-off valve.

7. Installation of the branch line may be no less than 3 inches but may be more than 12 inches from the roof but no closer than 3 inches.

8. Each automatic sprinkler will be designed to stop the running conveyor belt when a water sprinkler is activated.

9. Each automatic sprinkler will be a standard ⅜-inch orifice, pendant-type sprinkler, sidewall or umbrella spray with fusible link actuation. Actuation temperature for each automatic sprinkler will be between 200 degrees Fahrenheit and 230 degrees Fahrenheit.

10. A functional test to ensure proper operation will be conducted during the installation of each new system and during the subsequent repair or replacement of any critical part thereof. The functional test will be conducted in accordance with the following:

a. Close the manual shut-off valve.

b. Open the flush-out valve.

c. Attach a test manifold to the end of the branch line.

d. The manifold consists of a 2″ diameter pipe 2–3 feet long. The manifold is coupled to the end of the branch line. The end which attaches to the branch line is grooved and the other end is capped. There are ten ½-inch threaded pipe couplers welded to the 2–3 foot pipe. Eight fire suppression sprays with open orifices will be threaded to 8 of the pipe couplers. A suitable pressure gauge will be attached to the ninth pipe coupler on the downstream end. The tenth coupler is a spare and plugged.

e. Open the valve on the branch line and read the pressure indicated on the gauge. The water sprinkler system pressure is adequate if the gauge indicates 10 psi or more.

f. Verify that the water flow switch is activated and the dispatch center receives the alarm.

g. Restore the system to its operational condition.

The petitioner asserts that the proposed alternative method will guarantee the miners no less than the same measure of protection afforded by the standard.

Docket Number: M–2013–020–C

Petitioner: Liberty Fuels Company, LLC, 4707 Highway 493, DeKalb, Mississippi 39328.

Mine: Liberty Mine, MSHA I.D. No. 22–00803, located in Kemper County, Mississippi.

Regulation Affected: 30 CFR 77.803 (Fail safe ground check circuits on high-voltage resistance grounded systems).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance when the boom/mast is raised or lowered during necessary repairs. The petitioner states that it realizes that some stages of assembly/disassembly of draglines require special consideration when the boom mast is raising/lowering into position. The boom is raised/lowered utilizing the on-board motor electrical system. This is critical because during this process, power to the machine must not be interrupted. Power loss may result in the boom becoming uncontrolled and falling, and could injure workers. To address this condition, the following guidelines are proposed to help prevent loss of power to the machine. This procedure only addresses raising and lowering the boom on draglines utilizing the machine's electrical system. It does not replace other mechanical precautions or the requirements of 30 CFR 77.405(b) that are necessary to safely secure booms/masts during construction or maintenance procedures.

The following procedure has been designed for ''boom raising'' or ''boom lowering'' at the Liberty Mine. During this period of construction and maintenance, the machine will not be performing mining operations. This procedure will also be applicable in instances of disassembly or major maintenance, which require the boom to be raised or lowered. The following guidelines will be used to minimize the potential for electrical power loss during this critical boom procedure.

The Liberty Mine will use this procedure during disassembly or major maintenance only. Major maintenance requiring the raising and lowering of the boom mast would be performed on an as needed basis, which could span long periods of time. Therefore, training and review of the procedure would be conducted prior to this need. At such time all persons involved in the process would be trained and retrained.

(1) Liberty Mine employees, its contractors and affected persons will be trained on the requirements of the procedure at the mine.

(2) The procedure will be coordinated by a Liberty dragline maintenance supervisor and, if possible, the contractor's representative will assist. At least two (2) MSHA qualified electricians will be present at all times during the procedure.

(3) The number of persons required on board the machine will be limited. An MSHA qualified electrician, dragline operator, the dragline oiler, and individuals with critical tasks that are pertinent to the boom raising/lowering process will be permitted on the machine. The dragline maintenance supervisor and contractor's representative may either be on board or at a location on the ground to assist in the coordination.

(4) The affected area under the boom will be secured to prevent persons from entering and/or contacting the frame of the machine during the ''boom raising/lowering''. The area will be secured and only those identified in Item #3 will be permitted inside the secured area. At no time will anyone be permitted under the boom.

(5) Communication between the dragline operator, the MSHA qualified electrician at the dragline, the MSHA qualified electrician at the substation, the dragline maintenance supervisor and the contractor's representative, if present, will be a dedicated channel on the company's two-way radio.

(6) An MSHA qualified electrician will complete an examination of all electrical components that will be energized. The examination will be done within two (2) hours prior to the boom raising/lowering process. A record of this examination will be made available to interested parties. The machine will be de-energized to perform this examination.

(7) After the examination has been completed, the electrical components necessary to complete the boom raising/lowering process will be energized to assure they are operating properly as determined by an MSHA qualified electrician. When completed the machine will be de-energized and locked out.

(8) The ground fault and ground check circuits will be disabled provided:

(a) The internal grounding conductor of the trailing cable has been tested and is continuous from the frame of the dragline to the grounding resistor located at the substation. Utilizing the ground check circuit and disconnecting the pilot circuit at the machine frame and verifying the circuit breaker cannot be closed will be an acceptable test. Resistance measurements can also be used to assure the ground conductor is continuous. The grounding resistor will be tested to assure it is properly connected, is not open, or is not shorted.

(b) Normal short circuit protection will be provided at all times. The over current relay setting may be increased up to 100 percent above its normal setting.

(9) During the boom raising/lowering procedure an MSHA qualified electrician will be positioned at the substation dedicated to monitor the grounding circuit. The MSHA qualified electrician at the substation will at all times maintain communications with an MSHA qualified electrician at the dragline. If a grounded phase condition or an open ground wire should occur during the process, the MSHA qualified electrician at the substation will notify the MSHA qualified electrician at the dragline. All persons on board the machine must be aware of the condition and must remain on board the machine. The boom must be lowered to the ground or controlled and the electrical circuit de-energized, locked and tagged out. The circuit must remain de-energized until the condition is corrected. The ground fault and ground check circuits will be reinstalled prior to re-energizing and testing the machine. Once the circuits have been tested and no adverse conditions are present, the boom raising/lowering procedure, as outlined above, will be resumed.

(10) During this construction/maintenance procedure, persons cannot get on/off the dragline while the ground check ground fault circuits are disabled unless the circuit is de-energized, locked and tagged out as verified by the MSHA qualified electrician at the substation.

(11) After the boom raising/lowering is completed, the MSHA qualified electrician at the substation will restore all the protective devices to their normal state. When this has been completed, the MSHA qualified electrician at the substation will notify the dragline operator that all circuits are in their normal state. At this time normal work procedures can begin.

The petitioner asserts that the proposed alternative method will not result in a diminution of safety to the miners affected.

Dated: May 14, 2013.

George F. Triebsch,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2013–11887 Filed 5–17–13; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (13–053)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: May 20, 2013.

FOR FURTHER INFORMATION CONTACT: Robert H. Earp, III, Patent Attorney, Glenn Research Center at Lewis Field, Code 21–14, Cleveland, OH 44135; telephone (216) 433–5754; fax (216) 433–6790.

NASA Case No.: LEW–18789–1: Method to Increase Performance of Foil Bearings Through Passive Thermal Management;

NASA Case No.: LEW–18636–2: A Source Coupled N Channel JFET Based Digital Logic Gate Structure Using Resistive Level Shifters and Having Direct Application to High Temperature Silicon Carbide Electronics;

NASA Case No.: LEW–18789–PCT: Method to Increase Performance of Foil Bearings Through Passive Thermal Management;

NASA Case No.: LEW–18942–1: Adaptive Phase Delay Generator;

NASA Case No.: LEW–18887–1: Fuzzy Neuron: Method and Hardware Realization;

NASA Case No.: LEW–18816–1: High Speed Edge Detecting Circuit for Use with Linear Image Sensor;

NASA Case No.: LEW–18717–2: A Novel Wideband GaN MMIC Distributed Amplifier Based Microwave Power Module for Space

Communications, Navigation, and Radar;
NASA Case No.: LEW–18594–2: Thermomechanical Methodology for Stabilizing Shape Memory Alloy (SMA) Response;
NASA Case No.: LEW–18768–1: Processing of Nanosensors Using a Sacrificial Template Approach.

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2013–11941 Filed 5–17–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (13–058)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: May 20, 2013.

FOR FURTHER INFORMATION CONTACT: James J. McGroary, Patent Counsel, Marshall Space Flight Center, Mail Code LS01, Huntsville, AL 35812; telephone (256) 544–0013; fax (256) 544–0258.

NASA Case No.: MFS–32612–1–CIP: Safety System for Controlling Fluid Flow Into a Suction Line;

NASA Case No.: MFS–32830–1–DIV: Friction and Wear Modifiers Using Solvent Partitioning of Hydrophilic Surface-Interactive Chemicals Contained in Boundary Layer-Targeted Emulsions;

NASA Case No.: MFS–32744–1: Interconnect Device and Assemblies Made Therewith.

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2013–11946 Filed 5–17–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (13–056)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, has been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: May 20, 2013.

FOR FURTHER INFORMATION CONTACT: Edward K. Fein, Patent Counsel, Johnson Space Center, Mail Code AL, 2101 NASA Parkway, Houston, TX 77058, (281)483–4871; (281) 483–6936 [Facsimile].

NASA Case No.: MSC–24798–1: Soft Decision Analyzer and Method;
NASA Case No.: MSC–24919–1: Systems and Methods for RFID-Enables Information Collection;
NASA Case No.: MSC–25632–1: Robot Task Commander with Extensible Programming Environment;
NASA Case No.: MSC–25604–1: Systems and Methods for RFID-Enabled Dispenser;
NASA Case No.: MSC–25313–1: Hydrostatic Hyperbaric Apparatus and Method;
NASA Case No.: MSC–25265–1: Device and Method and for Digital-to-Analog Transformation and Reconstruction of Multi-channel Electrocardiograms;
NASA Case No.: MSC–24813–1: Preparation System and Method;
NASA Case No: MSC–25590–1: Systems and Methods for RFID-Enabled Pressure Sensing Apparatus;
NASA Case No.: MSC–25605–1: Switch Using Radio Frequency Identification.

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2013–11944 Filed 5–17–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (13–055)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: May 20, 2013.

FOR FURTHER INFORMATION CONTACT: Mark W. Homer, Patent Counsel, NASA Management Office—JPL, 4800 Oak Grove Drive, Mail Stop 180–200, Pasadena, CA 91109; telephone (818) 354–7770.

NASA Case No.: NPO–48413–1: Multi-Gb/s Laser Communications Terminal for Mini-Spacecraft;
NASA Case No.: NPO–48539–1: Neutral Mounting of Whispering Gallery Mode Resonators for Suppression of Acceleration-Induced Frequency Fluctuations;
NASA Case No.: DRC–012–011: System and Method for Air Launch From a Towed Aircraft;
NASA Case No.: DRC–012–005: Method and Apparatus of Multiplexing and Acquiring Data from Multiple Optical Fibers using a Single Data Channel of an Optical Frequency-Domain Reflectrometry (OFDR) System;
NASA Case No.: DRC–012–006: Cryogenic Liquid Level Sensor Apparatus and Method;
NASA Case No.: DRC–011–002: Magneto-Optic Field Coupling in Optical Fiber Bragg Gratings.

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2013–11943 Filed 5–17–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (13–057)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: May 20, 2013.

FOR FURTHER INFORMATION CONTACT: Robin W. Edwards, Patent Counsel, Langley Research Center, Mail Stop 30, Hampton, VA 23681–2199; telephone (757) 864–3230; fax (757) 864–9190.

NASA Case No.: LAR–18246–1: Tethered Vehicle Control and Tracking System;
NASA Case No.: LAR–17848–1: Method of Mapping Anomalies in Homogenous Material;
NASA Case No.: LAR–18090–1: Fluidic Oscillator Having Decoupled Frequency and Amplitude Control;
NASA Case No.: LAR–18301–1: Flap Edge Noise Reduction Fins;

NASA Case No.: LAR–17636–1: Space Vehicle Heat Shield Having Edgewise Strips of Ablative Material;
NASA Case No.: LAR–18166–1: Reactive Orthotropic Lattice Diffuser for Noise Reduction;
NASA Case No.: LAR–17317–2: Extreme Low Frequency Acoustic Measurement System;
NASA Case No.: LAR–18204–1: Quasi-Static Electric Field Generator;
NASA Case No.: LAR–18131–1: Puncture-Healing Thermoplastic Resin Carbon-Fiber Reinforced Composites;
NASA Case No.: LAR–18089–1: Fluidic Oscillator Array for Synchronized Oscillating Jet Generation;
NASA Case No.: LAR–18217–1: A Graphical Acoustic Liner Design and Analysis Tool;
NASA Case No.: LAR–18267–1: Method and System for Physiologically Modulating Action Role-playing Open World Video Games and Simulations Which Use Gesture and Body Image Sensing Control Input Devices;
NASA Case No.: LAR–18211–1: A Statistically Based Approach to Broadband Liner Design and Assessment;
NASA Case No.: LAR–18183–1: Height Control and Deposition Measurement for the Electron Beam Free Form Fabrication (EBF3) Process;
NASA Case No.: LAR–17887–1: Ultrasonic Device for Assessing the Quality of a Wire Crimp;
NASA Case No.: LAR–17947–1: Linear Fresnel Spectrometer Chip with Gradient Line Grating;
NASA Case No.: LAR–18144–1: Method and System for Physiologically Modulating Videogames and Simulations Which Use Gesture and Body Image Sensing Control Input Devices;
NASA Case No.: LAR–18179–1: Processing Device for High-Speed Execution of an xRISC Computer Program.

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2013–11945 Filed 5–17–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (13–052)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: May 20, 2013.

FOR FURTHER INFORMATION CONTACT: Robert M. Padilla, Patent Counsel, Ames Research Center, Code 202A–4, Moffett Field, CA 94035–1000; telephone (650) 604–5104; fax (650) 604–2767.

NASA Case No.: ARC–16833–1: Flight Deck Predictive Weather Display and Decision Support Interface;
NASA Case No.: ARC–16337–1: Method and Device for Biometric Subject Verification and Identification Based Upon Electrocardiographic Signals;
NASA Case No.: ARC 16812–1: Graphene Composite Materials for Supercapacitor Electrodes;
NASA Case No.: ARC 16372–1: Inexpensive Cooling Systems for Devices;
NASA Case No.: ARC 16732–1: NanoSat Launch Adapter System (NLAS).

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2013–11940 Filed 5–17–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (13–047)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark office, and are available for licensing.

DATES: May 20, 2013.

FOR FURTHER INFORMATION CONTACT: Edward K. Fein, Patent Counsel, Johnson Space Center, Mail Code AL, 2101 NASA Parkway, Houston, TX 77058, (281) 483–4871; (281) 483–6936 [Facsimile].

NASA Case No.: MSC–23988–2: Micro-Organ Device.

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2013–11939 Filed 5–17–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (13–054)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: May 20, 2013.

FOR FURTHER INFORMATION CONTACT: Bryan A. Geurts, Patent Counsel, Goddard Space Flight Center, Mail Code 140.1, Greenbelt, MD 20771–0001; telephone (301) 286–7351; fax (301) 286–9502.

NASA Case No.: GSC–16301–1: Impedance Matched to Vacuum, Invisible-Edge Diffraction Suppressed Mirror.

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2013–11942 Filed 5–17–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (13–059)]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the inventions described and claimed in USPN 8,338,114, Engineering Human Broncho-Epithelial Tissue-Like Assemblies, NASA Case No. MSC–24164–1; US Patent Application Serial Number 12/899,815, Modifying the Genetic Regulation of Bone and Cartilage Cells and Associated Tissue by EMF Stimulation Fields and Uses Thereof, NASA Case No. MSC–24541–1; and US Patent Application Serial Number 13/859,180, Alternating Ionic Magnetic Resonance (AIMR) Multiple-Chambered Culture Apparatus, NASA Case No. MSC–25545–1; and US Patent Application Serial Number 13/859,206,

Methods for Culturing Cells in an Alternating Ionic Magnetic Resonance (AIMR) Multiple-Chambered Culture Apparatus, NASA Case No. MSC–25633–1, to GRoK Technologies, LLC, having its principal place of business in Houston, Texas. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, NASA Johnson Space Center, 2101 NASA Parkway, Houston, Texas 77058, Mail Code AL; Phone (281) 483–3021; Fax (281) 483–6936.

FOR FURTHER INFORMATION CONTACT: Ted Ro, Intellectual Property Attorney, Office of Chief Counsel, NASA Johnson Space Center, 2101 NASA Parkway, Houston, Texas 77058, Mail Code AL; Phone (281) 244–7148; Fax (281) 483–6936. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/.*

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2013–11947 Filed 5–17–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (13–046)]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive, license in the United States to practice the invention described and claimed in U.S. Patent Application No. 61/781,222; NASA Case No. KSC–13771 entitled ''Inductive Position Sensor Assemblies,'' to Juntura Group Inc., having its principal place of business at 5326 Tattinger Lane, Oviedo, FL 32765. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL 32899. Telephone: 321–867–7214; Facsimile: 321–867–1817.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Patent Counsel, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL 32899. Telephone: 321–867–7214; Facsimile: 321–867–1817. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/.*

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2013–11938 Filed 5–17–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (13–044)]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive, license in the United States to practice the invention described and claimed in U.S. Patent Application No. 12/961,344; NASA Case No. KSC–13265 entitled ''Inductive Position Sensor,'' to Juntura Group Inc., having its principal place of business at 5326 Tattinger Lane, Oviedo, FL 32765. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL 32899. Telephone: 321–867–7214; Facsimile: 321–867–1817.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Patent Counsel, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL 32899. Telephone: 321–867–7214; Facsimile: 321–867–1817. Information about other NASA inventions available

for licensing can be found online at *http://technology.nasa.gov/*.

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2013–11936 Filed 5–17–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (13–045)]

Notice of Intent To Grant Exclusive License.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive, license in the United States to practice the invention described and claimed in U.S. Patent Application No. 13/827,457; NASA Case No. KSC–13265–CIP entitled ''Inductive Position Sensor,'' to Juntura Group Inc., having its principal place of business at 5326 Tattinger Lane, Oviedo, FL 32765. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL 32899. Telephone: 321–867–7214; Facsimile: 321–867–1817.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Patent Counsel, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL 32899. Telephone: 321–867–7214; Facsimile: 321–867–1817. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/*.

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2013–11937 Filed 5–17–13; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Proj-0792; NRC–2013–0053]

Applications; SHINE Medical Technologies, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; receipt and availability.

FOR FURTHER INFORMATION CONTACT: Steven Lynch, Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1524; email: *Steven.Lynch@nrc.gov*.

SUPPLEMENTARY INFORMATION: On March 26, 2013 (SMT–2013–012, Agencywide Documents Access and Management System (ADAMS) Accession No. ML13088A192), SHINE Medical Technologies (SHINE) filed with the U.S. Nuclear Regulatory Commission (NRC) pursuant to Section 103 of the Atomic Energy Act, and Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), a portion of an application for a construction permit application for a medical radioisotope production facility in Janesville, Wisconsin.

An exemption from certain requirements of 10 CFR 2.101(a)(5) granted by the Commission on March 20, 2013 (ADAMS Accession No. ML13072B195), in response to a letter from SHINE dated February 18, 2013 (ADAMS Accession No. ML13051A007), allowed for SHINE to submit its construction permit application in two parts. Specifically, the exemption allowed SHINE to submit a portion of its application for a construction permit up to six months prior to the remainder of the application regardless of whether or not an environmental impact statement or a supplement to an environmental impact statement is prepared during the review of its application. On March 26, 2013, in accordance with 10 CFR 2.101(a)(5), SHINE submitted the following in part one of the construction permit application:

- the description and safety assessment of the site required by 10 CFR 50.34(a)(1)
- the environmental report required by 10 CFR 50.30(f)
- the filing fee information required by 10 CFR 50.30(e) and 10 CFR 170.21
- the general information required by 10 CFR 50.33
- the agreement limiting access to classified information required by 10 CFR 50.37

As stated in SHINE's March 26, 2013, letter, part two of SHINE's application for a construction permit will contain the remainder of the preliminary safety analysis report required by 10 CFR 50.34(a) and will be submitted in accordance with the requirements of 10 CFR 2.101(a)(5).

Subsequent **Federal Register** notices will address the acceptability of this part of the tendered construction permit application for docketing and provisions for public participation in the construction permit application review process.

A copy of the application is available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. The accession number for the application is ML130880226. Future publicly available documents related to the application will also be posted in ADAMS. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room staff by telephone at 1–800–397–4209 or 301–415–4737, or by email to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 8th day of May, 2013.

For the Nuclear Regulatory Commission.

Alexander Adams, Jr.,

Chief, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–11933 Filed 5–17–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos.: 52–034 and 52–035; NRC–2008–0594]

Luminant Generation Company, LLC; Combined License Application for Comanche Peak Nuclear Power Plant, Units 3 and 4; Exemption

1.0 Background

Luminant Generation Company, LLC. (Luminant) submitted to the U.S. Nuclear Regulatory Commission (NRC) Combined License (COL) Applications for two United States—Advanced Pressurized Water Reactors (US–APWR) in accordance with the requirements of Part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR), Subpart C, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' These reactors will be identified as Comanche Peak Nuclear Power Plant (CPNPP), Units 3 and 4, and are located at the existing Comanche Peak site in Somervell County, Texas. The NRC docketed the application on December 2, 2008, and is currently performing a review of the application. In addition, the NRC is currently performing a detailed review of the Mitsubishi Heavy Industries, Ltd. application for the design certification of the US–APWR.

2.0 Request/Action

The regulations specified in 10 CFR 50.71(e)(3)(iii) require that an applicant for a COL under Subpart C of 10 CFR part 52 shall, during the period from docketing of a COL application, until the Commission makes a finding under 10 CFR 52.103(g) pertaining to facility operation, submit an annual update to the application's Final Safety Analysis Report (FSAR), which is a part of the application.

Luminant submitted COL application, FSAR, Revision 3, on June 28, 2012. Pursuant to 10 CFR 50.71(e)(3)(iii), the next annual update (COL application, FSAR, Revision 4) would be due in June 2013. Luminant has requested a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) to allow for the submittal of COL application, FSAR, Revision 4, on or before November 30, 2013.

In summary, the requested exemption is a one-time schedule change from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow Luminant to submit the FSAR update (Revision 4) on or before November 30, 2013, and to submit the subsequent FSAR update (Revision 5) by November 2014. The FSAR update schedule could not be changed, absent the exemption.

Luminant requested the exemption by letter dated January 28, 2013, (Agencywide Documents Access and Management System (ADAMS) accession number ML13031A041).

3.0 Discussion

Pursuant to 10 CFR 50.12, the NRC may upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, including Section 50.71(e)(3)(iii) when: (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. As relevant to the requested exemption, special circumstances exist if: (1) ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)); (2) ''Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated'' (10 CFR 50.12(a)(2)(iii)); or (3) ''The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation'' (10 CFR 50.12(a)(2)(v)).

The US–APWR Design Control Document (DCD) and the CPNPP, Units 3 and 4, COL application FSAR are currently undergoing NRC staff review. Because the COL application FSAR is directly linked to the US–APWR DCD, many DCD changes require an associated change to the COL application FSAR. The committed changes for both the US–APWR DCD and the COL application FSAR are consolidated into a revision for the COL application, which is periodically submitted to the NRC. Thus, the optimum time to prepare a revision to the COL application FSAR is shortly after a DCD revision has been submitted. To prepare and submit a COL application FSAR update midway between DCD revisions would require significantly more time and effort. Luminant would need to identify all committed changes to the DCD since the last US–APWR revision in order to create a COL application FSAR revision that accurately and completely reflects the committed changes to the US–APWR DCD, made since the last DCD revision.

The requested one-time exemption to incorporate US–APWR DCD, Revision 4, into the CPNPP COL application FSAR update would provide only temporary relief from the regulations of 10 CFR 50.71(e)(3)(iii). Luminant has made good faith efforts to comply with 10 CFR 50.71(e)(3)(iii) by maintaining a ''living'' COL application, in which Luminant continuously incorporates changes resulting from its responses to requests for additional information (RAIs), commitments, or other identified changes. Luminant has also submitted proposed changes to the COL application FSAR pages along with responses to NRC RAIs. Additionally, Luminant has periodically submitted Updated Tracking Reports, which provide changes to the COL application FSAR that reflect changes to the COL application FSAR.

Authorized by Law

The exemption is a one-time schedule exemption from the requirements of 10 CFR 50.71(e)(3)(iii). The exemption would allow the applicant to submit the CPNPP, Units 3 and 4, COL Application FSAR annual update scheduled for June 2013, on or before November 30, 2013, and to submit the subsequent FSAR annual update in November 2014. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions. The NRC staff has determined that granting Luminant the requested one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) will provide only temporary relief from this regulation and will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to provide for a timely and comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. The requested exemption is solely administrative in nature, in that it pertains to the schedule for submittal to the NRC of revisions to an application under 10 CFR Part 52, for which a license has not been granted.

Based on the above, no new accident precursors are created by the exemption; thus, the probability of postulated accidents is not increased. Also, based on the above, the consequences of postulated accidents are not increased. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The requested exemption would allow Luminant to submit the FSAR annual update (Revision 4) scheduled for June 2013, on or before November 30, 2013, and to submit the subsequent FSAR annual update in November 2014. This schedule change has no relation to security issues.

Therefore, the common defense and security is not impacted by this exemption.

Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2), are present whenever: (1) ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule'' (10 CFR 50.12(a)(2)(ii)); (2) ''Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated'' (10 CFR 50.12(a)(2)(iii)); or (3) ''The exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation'' (10 CFR 50.12(a)(2)(v)).

The underlying purpose of 10 CFR 50.71(e)(3)(iii) is to provide for a timely and comprehensive update of the FSAR associated with a COL application in order to support an effective and efficient review by the NRC staff and issuance of the NRC staff's safety evaluation report. As discussed above, the requested one-time exemption is solely administrative in nature, in that it pertains to a one-time schedule change for submittal of revisions to an application under 10 CFR Part 52, for which a license has not been granted. The requested one-time exemption will permit Luminant time to carefully review Revision 4 of the US–APWR DCD and fully incorporate DCD revisions into a comprehensive update of the CPNPP, Units 3 and 4, FSAR associated with the COL application. This one-time exemption will support the NRC staff's effective and efficient review of the COL application and issuance of the safety evaluation report, and therefore does not affect the underlying purpose of 10 CFR 50.71(e)(3)(iii). Because the application of 10 CFR 50.71(e)(3)(iii) in the particular circumstances is not necessary to achieve the underlying purpose of that rule; granting a one-time exemption from 10 CFR 50.71(e)(3)(iii) would provide only temporary relief; and Luminant has made good faith efforts to comply with the regulation, the special circumstances required by 10 CFR 50.12 (a)(2) for the granting of an exemption from 10 CFR 50.71(e)(3)(iii) exist.

4.0 Conclusion

Accordingly, the NRC has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law and will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the NRC hereby grants Luminant a one-time exemption from the requirements of 10 CFR 50.71(e)(3)(iii) pertaining to the CPNPP, Units 3 and 4, COL application to allow the submittal of the FSAR update scheduled for June 2013, on or before November 30, 2013, and to submit the subsequent FSAR annual update in November 2014.

Pursuant to 10 CFR 51.32, the NRC has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (78 FR 25486).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 8th day of May 2013.

For the Nuclear Regulatory Commission.

Samuel Lee,

Chief, Licensing Branch 2, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2013–11934 Filed 5–17–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0098]

Embedded Digital Devices in Safety-Related Systems, Systems Important to Safety, and Items Relied on for Safety

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory issue summary; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment Draft Regulatory Issue Summary (RIS) 2013–XX, ''Embedded Digital Devices in Safety-Related Systems, Systems Important to Safety, and Items Relied on For Safety.'' The NRC staff has developed the draft RIS to clarify the NRC's technical position on existing regulatory requirements for the quality and reliability of basic components with embedded digital devices.

DATES: Submit comments by July 19, 2013. Comments received after this date will be considered, if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comment by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0098. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene Eagle, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Telephone: 301–415–3706; email: *Eugene.Eagle@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0098 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, by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0098.
- *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 draft RIS is available in ADAMS under Accession No. ML12248A065.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0098 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

The RIS discusses, and clarifies, the NRC's technical position on existing regulatory requirements for the quality and reliability of basic components with embedded digital devices. Further, the purpose is to also raise awareness that there may be potential safety issues from a postulated common cause failure (CCF) if an undetected software error should occur in embedded digital devices located in multiple trains of redundant safety equipment in nuclear facilities.

The NRC plans to hold a public meeting to discuss this RIS and the issues associated with embedded digital devices. All comments that are to receive consideration in the final RIS must still be submitted electronically or in writing as indicated below.

Additional details regarding the meeting will be posted at least 10 days prior to the public meeting on NRC's Public Meeting Schedule Web site at *http://www.nrc.gov/public-involve/public-meetings/index.cfm.*

The NRC issues RISs to communicate with stakeholders on a broad range of matters. This may include communicating staff technical positions on matters that have not been communicated to, or, are not broadly understood by the nuclear industry.

Proposed Action

The NRC is requesting public comments on the draft RIS. The NRC plans to hold a public meeting in the near future to discuss Draft Regulatory Issue Summary (RIS) 2013–XX, ''Embedded Digital Devices in Safety-Related Systems, Systems Important to Safety, and Items Relied on For Safety,'' and to obtain feedback from members of the public. The meeting agenda will be posted at least 10 days prior to the public on the NRC's Public Meeting Schedule Web site at *http://www.nrc.gov/public-involve/public-meetings/index.cfm.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been cancelled or rescheduled, and the time allotted for public comments can be obtained from the Public Meeting Schedule Web site.

Dated at Rockville, Maryland, this 8th day of May 2013.

For the Nuclear Regulatory Commission,

Ian C. Jung,

Chief, Instrumentation, Controls and Electronics Engineering Branch 2 Division of Engineering, Office of New Reactor.

[FR Doc. 2013–11935 Filed 5–17–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–186; NRC–2013–0090]

University of Missouri—Columbia Facility Operating License No. R–103

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal application; docketing; opportunity to comment; opportunity to request a hearing and petition for leave to intervene; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering an application for the renewal of Facility Operating License No. R–103 (''Application''), which currently authorizes the Curators of the University of Missouri—Columbia (the licensee) to operate the Missouri University Research Reactor (MURR) at a maximum steady-state thermal power of 10 megawatts (MW). The renewed license would authorize the licensee to operate the MURR up to a steady-state thermal power of 10 MW for an additional 20 years from the date of issuance.

DATES: Submit comments by June 19, 2013. Requests for a hearing or leave to intervene must be filed by July 19, 2013. Any potential party as defined in Section 2.4 of Title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to Sensitive Unclassified Non-Safeguards Information (SUNSI) is necessary to respond to this notice must request document access by May 30, 2013.

ADDRESSES: You may submit comment by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0090. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

• *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Geoffrey Wertz, Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0893; email: *geoffrey.wertz@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0090 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, by the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0090.

• *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 document (if that document is available in ADAMS) is provided the first time that a document is referenced. In addition, for the convenience of the reader, the ADAMS accession numbers for documents that pertain to the MURR license renewal are provided in a table in Section II, Availability of Documents, of this document.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0090 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Availability of Documents

The following documents pertain to the MURR License Renewal: August 31, 2006, (ML062540114, ML092110597, ML092110573, ML062540121); September 14, 2009, (ML092590298); January 15, 2010, (ML100220371); January 29, 2010, (ML100330073); July 16, 2010, (ML12354A237); August 31, 2010, (ML120050315); September 3, 2010, (ML102500533); September 30, 2010, (ML12355A019); October 29, 2010, (ML103060018, ML12355A023); November 30, 2010, (ML12355A026); March 11, 2011, (ML110740249); September 8, 2011, (ML11255A003); January 6, 2012, (ML12010A186); June 28, 2012, (ML12346A004); January 4, 2013, (ML13007A425); and March 12, 2013, (ML13079A214).

III. Introduction

The NRC is considering an application for the renewal of Facility Operating License No. R–103, which, currently authorizes the licensee to operate the MURR at a maximum steady-state thermal power of 10 MW. The renewed license would authorize the licensee to operate the MURR up to a steady-state thermal power of 10 MW for an additional 20 years from the date of issuance.

By letter dated August 31, 2006, as supplemented by letters dated September 14, 2009; January 15, January 29, July 16, August 31, September 3, September 30, October 29 (two letters), November 30, 2010; March 11, and September 8, 2011; January 6, and June 28, 2012; and January 4 and March 12, 2013; the NRC received an application from the licensee filed pursuant to 10 CFR 50.51(a) to renew Facility Operating License No. R–103 for the MURR.

The application contains SUNSI.

Based on its initial review of the application, the NRC staff determined that the licensee submitted sufficient information in accordance with 10 CFR 50.33 and 10 CFR 50.34 so that the application is acceptable for docketing. The current Docket No. 50–186 for Facility Operating License No. R–103 will be retained. The docketing of the renewal application does not preclude requests for additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application. Prior to a decision to renew the license, the Commission will make findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

Detailed guidance which the NRC uses to review applications for the renewal of non-power reactor licenses can be found in NUREG–1537, ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors.'' The detailed review guidance (NUREG–1537) may be accessed online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS Accession No. ML042430055 for Part 1 of NUREG–1537 and ADAMS Accession No. ML042430048 for Part 2 of NUREG–1537.

IV. Opportunity To Request a Hearing and Petitions for Leave To Intervene

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, ''Hearing requests, petitions to intervene, requirements for standing, and contentions.'' Interested persons should consult 10 CFR 2.309, which is available at the NRC's Public Document Room (PDR), located at O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at 1–800–397–4209 or 301–415–4737. The NRC's regulations are also accessible electronically from the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*.

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings that the NRC

must make to support the granting of a license renewal in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions that support the position of the petitioner and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for license renewal that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner believes that the application for license renewal fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the petitioner's belief. Each contention must be one that, if proven, would entitle the petitioner to relief.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with the NRC's regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1): (i) The information upon which the filing is based was not previously available; (ii) the information upon which the filing is based is materially different from information previously available; and (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information.

A State, county, municipality, Federally-recognized Indian tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by July 19, 2013. The petition must be filed in accordance with the filing instructions in Section V of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State, local governmental bodies, and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance under 10 CFR 2.315(a), by making an oral or written statement of his or her position on the issues at any session of the hearing or at any pre-hearing conference, within the limits and conditions fixed by the presiding officer. However, that person may not otherwise participate in the proceeding. A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Atomic Safety and Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by July 19, 2013.

V. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-

Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

1. A description of the licensing action with a citation to this **Federal Register** notice;

2. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

3. The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) officer if that officer has been designated to rule on information access issues.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 14th day of May 2013.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

[FR Doc. 2013–11992 Filed 5–17–13; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 477. OMB Control No. 3235–0550, SEC File No. 270–493.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 477 (17 CFR 230.477) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) sets forth procedures for withdrawing a registration statement, including any amendments or exhibits to the registration statement. The rule provides that if an issuer intends to rely on the safe harbor contained in Securities Act Rule 155 to conduct an unregistered private offering of securities, the issuer must affirmatively state in the withdrawal application that it plans to undertake a subsequent private offering of its securities. Without this statement, the Commission would not be able to monitor a company's reliance on, and compliance with, Securities Act Rule 155(c). We estimate that approximately 300 issuers will file Securities Act Rule 477 submissions annually at an estimated one hour per response for a total annual burden of approximately 300 hours.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 14, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–11894 Filed 5–17–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 155. OMB Control No. 3235–0549, SEC File No. 270–492.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 155 (17 CFR 230.155) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) provides safe harbors for a registered offering of securities following an abandoned private offering, or a private offering following an abandoned registered offering, without integrating the registered and private offerings in either case. In connection with a registered offering following an abandoned private offering, Rule 155 requires an issuer to include in any prospectus filed as a part of a registration statement disclosure regarding the abandoned the private offering. Similarly, the rule requires an issuer to provide each offeree in a private offering following an abandoned registered offering with: (1) Information concerning the withdrawal of the registration statement; (2) the fact that the private offering is unregistered; and (3) the legal implications of the offering's unregistered status. We estimate Rule 155 takes approximately 4 hours per response to prepare and is filed by 600 respondents annually. We estimate that 50% of the 4 hours per response (2 hours per response) is prepared by the filer for a total annual reporting burden of 1,200 hours (2 hours per response × 600 responses).

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: May 14, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–11893 Filed 5–17–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form N–SAR. OMB Control No. 3235–0330, SEC File No. 270–292.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments

on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Form N–SAR (OMB Control No. 3235–0330, 17 CFR 249.330) is the form used by all registered investment companies with the exception of face amount certificate companies, to comply with the periodic filing and disclosure requirements imposed by Section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act''), and of rules 30a–1 and 30b1–1 thereunder (17 CFR 270.30a–1 and 17 CFR 270.30b1–1). The information required to be filed with the Commission assures the public availability of the information and permits verification of compliance with Investment Company Act requirements. Registered unit investment trusts are required to provide this information on an annual report filed with the Commission on Form N–SAR pursuant to rule 30a–1 under the Investment Company Act, and registered management investment companies must submit the required information on a semi-annual report on Form N–SAR pursuant to rule 30b1–1 under the Investment Company Act.

The Commission estimates that the total number of respondents is 3,270 and the total annual number of responses is 5,770 ((2,500 management investment company respondents x 2 responses per year) + (770 unit investment trust respondents x 1 response per year)). The Commission estimates that each registrant filing a report on Form N–SAR would spend, on average, approximately 14.25 hours in preparing and filing reports on Form N–SAR and that the total hour burden for all filings on Form N–SAR would be 82,223 hours.

The collection of information under Form N–SAR is mandatory. Responses to the collection of information will not be kept confidential. 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 control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov*.

Dated: May 14, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–11891 Filed 5–17–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30514; 812–14146]

ERNY Financial ETF Trust and ERNY Financial Advisors, LLC; Notice of Application

May 13, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

Applicants: ERNY Financial ETF Trust (''Trust'') and ERNY Financial Advisors, LLC (''Adviser'').

Summary of Application: Applicants request an order that permits: (a) Actively-managed series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

DATES: *Filing Dates:* The application was filed on April 5, 2013 and amended on May 10, 2013.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 7, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: 402 West Broadway, Suite 2800, San Diego, CA 92101.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 551–6812 or David P. Bartels, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Exemptive Applications).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is a statutory trust organized under the laws of Delaware and intends to register as an open-end management investment company under the Act. It currently is intended that the initial series of the Trust will be the ERNY Large Capitalization Dividend ETF (the ''Initial Fund''), the investment objective of which will be to seek long-term capital appreciation and income. The Initial Fund will invest in listed equity securities and may invest in futures, options, swaps, and other derivative instruments.[1] The Initial Fund may take long or short positions.

[1] If a Fund (as defined below) invests in derivatives, then (a) the board of trustees (''Board'')

Continued

2. The Adviser, a Delaware limited liability company, intends to register with the Commission as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and will serve as investment adviser to the Initial Fund. The Adviser may in the future retain one or more sub-advisers (each a ''Sub-Adviser'') to manage the portfolios of the Funds (as defined below). Any Sub-Adviser will be registered, or not subject to registration, under the Advisers Act. The Trust will enter into a distribution agreement with one or more distributors (each, a ''Distributor''). Each Distributor will be a registered broker-dealer (''Broker'') under the Securities Exchange Act of 1934 (''Exchange Act'') and will act as the distributor and principal underwriter one or more of the Funds.

3. Applicants request that the order apply to the Initial Fund and any future series of the Trust or of any other open-end management companies that may utilize active management investment strategies (''Future Funds''). Any Future Fund will (a) be advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser (each, an ''Adviser''), and (b) comply with the terms and conditions of the application.[2] The Initial Fund and Future Funds together are the ''Funds''.[3] Each Fund will consist of a portfolio of securities (including fixed income securities and/or equity securities) and/or currencies traded in the U.S. and/or non-U.S. markets, and other assets (collectively, and together with any other positions held by the Fund, ''Portfolio Instruments''). Funds may invest in ''Depositary Receipts''.[4] Each Fund will operate as an actively managed exchange-traded fund (''ETF'').

4. Applicants also request that any exemption under section 12(d)(1)(J) of the Act from sections 12(d)(1)(A) and (B) apply to: (i) Any Fund that is currently or subsequently part of the same ''group of investment companies'' as the Initial Fund within the meaning of section 12(d)(1)(G)(ii) of the Act; (ii) any principal underwriter for the Fund; (iii) any Brokers selling Shares of a Fund to an Investing Fund (as defined below); and (iv) each management investment company or unit investment trust registered under the Act that is not part of the same ''group of investment companies'' as the Funds within the meaning of section 12(d)(1)(G)(ii) of the Act and that enters into a FOF Participation Agreement (as defined below) with a Fund (such management investment companies, ''Investing Management Companies,'' such unit investment trusts, ''Investing Trusts,'' and Investing Management Companies and Investing Trusts together, ''Investing Funds''). Investing Funds do not include the Funds.[5]

5. Applicants anticipate that a Creation Unit will consist of at least 25,000 Shares. Applicants anticipate that the trading price of a Share will range from $10 to $200. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into a participant agreement with the Distributor and the transfer agent of the Fund (''Authorized Participant'') with respect to the creation and redemption of Creation Units. An Authorized Participant is either: (a) a Broker or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''), a clearing agency registered with the Commission and affiliated with the Depository Trust Company (''DTC''), or (b) a participant in the DTC (such participant, ''DTC Participant'').

6. In order to keep costs low and permit each Fund to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[6] On any given Business Day[7] the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or redemption, as the ''Creation Basket.'' In addition, the Creation Basket will correspond pro rata to the positions in a Fund's portfolio (including cash positions),[8] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots;[9] or (c) TBA Transactions,[10] short positions and other positions that cannot be transferred in kind[11] will be excluded from the Creation Basket.[12] If there is a difference between NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

7. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is

of the Fund will periodically review and approve the Fund's use of derivatives and how the Adviser assesses and manages risk with respect to the Fund's use of derivatives and (b) the Fund's disclosure of its use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance.

[2] Any Adviser to a Future Fund will be registered as an investment adviser under the Advisers Act. All entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

[3] Applicants further request that the order apply to any future distributor and principal underwriter of the Funds, which would be a Broker and would comply with the terms and conditions of the application. The distributor and principal underwriter of any Fund may be an affiliated person of the Adviser and/or Sub-Advisers.

[4] Depositary Receipts are typically issued by a financial institution, a ''depository'', and evidence ownership in a security or pool of securities that have been deposited with the depository. A Fund will not invest in any Depositary Receipts that the Adviser or Sub-Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated persons of applicants, any Future Fund or any Sub-Adviser will serve as the depository for any Depositary Receipts held by a Fund.

[5] An Investing Fund may rely on the order only to invest in the Funds and not in any other registered investment company.

[6] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[7] Each Fund will sell and redeem Creation Units on any day the Fund is open for business, as required by section 22(e) of the Act (each, a ''Business Day'').

[8] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's net asset value (''NAV'') for that Business Day.

[9] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[10] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree on general trade parameters such as agency, settlement date, par amount and price.

[11] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[12] Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Cash Amount (defined below).

a Cash Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC or DTC; or (ii) in the case of Funds holding non-U.S. investment (''Global Funds''), such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Global Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[13]

8. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act (''Stock Exchange''), on which Shares are listed, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. The Stock Exchange will disseminate every 15 seconds throughout the trading day an amount representing, on a per Share basis, the sum of the current value of the Portfolio Instruments that were publicly disclosed prior to the commencement of trading in Shares on the Stock Exchange.

9. A Fund may recoup the settlement costs charged by NSCC and DTC by imposing a transaction fee on investors purchasing or redeeming Creation Units (the ''Transaction Fee''). The Transaction Fee will be borne only by purchasers and redeemers of Creation Units and will be limited to amounts that have been determined appropriate by the Adviser to defray the transaction expenses that will be incurred by a Fund when an investor purchases or redeems Creation Units.[14] All orders to purchase Creation Units will be placed with the Distributor by or through an Authorized Participant and the Distributor will transmit all purchase orders to the relevant Fund. The Distributor will be responsible for delivering a prospectus (''Prospectus'') to those persons purchasing Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

10. Shares will be listed and traded at negotiated prices on a Stock Exchange and traded in the secondary market. Applicants expect that Stock Exchange specialists or market makers (''Market Makers'') will be assigned to Shares. The price of Shares trading on the Stock Exchange will be based on a current bid/offer in the secondary market. Transactions involving the purchases and sales of Shares on the Stock Exchange will be subject to customary brokerage commissions and charges.

11. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Specialists or Market Makers, acting in their unique role to provide a fair and orderly secondary market for Shares, also may purchase Creation Units for use in their own market making activities.[15] Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[16] Applicants expect that arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV per Share should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

12. Shares will not be individually redeemable and owners of Shares may acquire those Shares from a Fund, or tender such shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant.

13. Neither the Trust nor any Fund will be marketed or otherwise held out as a ''mutual fund.'' Instead, each Fund will be marketed as an ''actively-managed exchange-traded fund.'' In any advertising material where features of obtaining, buying or selling Shares traded on the Stock Exchange are described, there will be an appropriate statement to the effect that Shares are not individually redeemable.

14. The Funds' Web site, which will be publicly available prior to the public offering of Shares, will include a Prospectus and additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or mid-point of the bid/ask spread at the time of the calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments held by the Fund (including any short positions held in securities (''Short Positions'')) that will form the basis for the Fund's calculation of NAV at the end of the Business Day.[17]

[13] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[14] Where a Fund permits an in-kind purchaser to deposit cash in lieu of depositing one or more Deposit Instruments, the purchaser may be assessed a higher Transaction Fee to offset the cost to the Fund of buying those particular Deposit Instruments. In all cases, the Transaction Fee will be limited in accordance with the requirements of the Commission applicable to open-end management investment companies offering redeemable securities.

[15] If Shares are listed on The NASDAQ Stock Market LLC (''Nasdaq'') or a similar electronic Stock Exchange (including NYSE Arca), one or more member firms of that Stock Exchange will act as Market Maker and maintain a market for Shares trading on that Stock Exchange. On Nasdaq, no particular Market Maker would be contractually obligated to make a market in Shares. However, the listing requirements on Nasdaq, for example, stipulate that at least two Market Makers must be registered in Shares to maintain a listing. In addition, on Nasdaq and NYSE Arca, registered Market Makers are required to make a continuous two-sided market or subject themselves to regulatory sanctions. No Market Maker will be an affiliated person or an affiliated person of an affiliated person, of the Funds, except within the meaning of section 2(a)(3)(A) or (C) of the Act due solely to ownership of Shares as discussed below.

[16] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

[17] Applicants note that under accounting procedures followed by the Funds, trades made on the prior Business Day will be booked and reflected in NAV on the current Business Day. Accordingly, each Fund will be able to disclose at the beginning of the Business Day the portfolio that will form the

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Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit each Fund to redeem Shares in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units from each Fund. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary materially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) Prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution system of investment company shares by eliminating price competition from brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity should ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that settlement of redemptions of Creation Units of Global Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Instruments to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 14 calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Instruments of each Global Fund customarily clear and settle, but in all cases no later than 14 calendar days following the tender of a Creation Unit.[18]

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within a maximum of 14 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state each Global Fund's statement of additional information (''SAI'') will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days needed to deliver the proceeds for each affected Global Fund. Applicants are not seeking relief from

basis for its NAV calculation at the end of such Business Day.

[18] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations that it may otherwise have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date.

section 22(e) with respect to Global Funds that do not effect redemptions in-kind.

Section 12(d)(1) of the Act

9. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request relief to permit Investing Funds to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the Funds, their principal underwriters and any Broker to sell Shares to Investing Funds in excess of the limits in section 12(d)(1)(B) of the Act. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

11. Applicants submit that their proposed conditions address any concerns regarding the potential for undue influence. To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting the adviser of an Investing Management Company (''Investing Fund Adviser''), sponsor of an Investing Trust (''Sponsor''), any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Adviser, the Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor (''Investing Fund's Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any sub-adviser to an Investing Management Company (''Investing Fund Sub-Adviser''), any person controlling, controlled by or under common control with the Investing Fund Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund Sub-Adviser or any person controlling, controlled by or under common control with the Investing Fund Sub-Adviser (''Investing Fund's Sub-Advisory Group'').

12. Applicants propose a condition to ensure that no Investing Fund or Investing Fund Affiliate [19] (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Adviser, Investing Fund Sub-Adviser, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an Advisory board, Investing Fund Adviser, Investing Fund Sub-Adviser, employee or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

13. Applicants propose several conditions to address the potential for layering of fees. Applicants note that the board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''disinterested directors or trustees''), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[20]

14. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

15. To ensure that an Investing Fund is aware of the terms and conditions of the requested order, the Investing Funds must enter into an agreement with the respective Funds (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Investing Fund that it may rely on the order only to invest in a Fund and not in any other investment company.

Sections 17(a)(1) and (2) of the Act

16. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person (''second tier affiliate''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines ''control'' as the power to exercise a controlling influence over the management or policies of a company and provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. Each Fund may be deemed to be controlled by an Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by an Adviser (an ''Affiliated Fund'').

17. Applicants request an exemption under sections 6(c) and 17(b) of the Act

[19] An ''Investing Fund Affiliate'' is any Investing Fund Adviser, Investing Fund Sub-Adviser, Sponsor, promoter and principal underwriter of an Investing Fund, and any person controlling, controlled by or under common control with any of these entities. ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

[20] Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (a) holding 5% or more, or in excess of 25% of the outstanding Shares of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25% of the Shares of one or more Affiliated Funds.[21] Applicants also request an exemption in order to permit a Fund to sell its Shares to and redeem its Shares from, and engage in the in-kind transactions that would accompany such sales and redemptions with, certain Investing Funds of which the Funds are affiliated persons or second-tier affiliates.[22]

18. Applicants assert that no useful purpose would be served by prohibiting such affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. Absent the unusual circumstances discussed in the application, the Deposit Instruments and Redemption Instruments available for a Fund will be the same for all purchasers and redeemers, respectively, and will correspond *pro rata* to the Fund's Portfolio Instruments. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be the same for all purchases and redemptions. Deposit Instruments and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the relevant Funds, and the valuation of the Deposit Instruments and Redemption Instruments will be made in the same manner and on the same terms for all, regardless of the identity of the purchaser or redeemer. Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

19. Applicants also submit that the sale of Shares to and redemption of Shares from an Investing Fund meets the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund's registration statement.[23] The FOF Participation Agreement will require any Investing Fund that purchases Creation Units directly from a Fund to represent that the purchase of Creation Units from a Fund by an Investing Fund will be accomplished in compliance with the investment restrictions of the Investing Fund and will be consistent with the investment policies set forth in the Investing Fund's registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. ETF Relief

1. As long as a Fund operates in reliance on the requested order, the Shares of the Fund will be listed on a Stock Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

3. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis, for each Fund the prior Business Day's NAV and the market closing price or Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

4. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

5. The Adviser or any Sub-Adviser, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for the Fund through a transaction in which the Fund could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively-managed exchange-traded funds.

B. Section 12(d)(1) Relief

1. The members of the Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of the Investing Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Fund's Sub-Advisory Group with respect to a Fund for which the Investing Fund Sub-Adviser or a person controlling, controlled by or under common control with the Investing Fund Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to ensure that the Investing Fund Adviser and any Investing Fund Sub-Adviser are conducting the investment program of the Investing Management Company

[21] Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of an Investing Fund because an investment adviser to the Funds is also an investment adviser to an Investing Fund.

[22] Applicants expect most Investing Funds will purchase Shares in the secondary market and will not purchase Creation Units directly from a Fund. To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between an Investing Fund and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Investing Fund and redemptions of those Shares. The requested relief is intended to also cover the in-kind transactions that may accompany such sales and redemptions.

[23] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares of the Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Investing Fund, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in the Shares of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board of a Fund, including a majority of the independent directors or trustees, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Investing Fund Adviser, or Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Investing Fund Adviser, or Trustee or Sponsor, or an affiliated person of the Investing Fund Adviser, or Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Adviser, or Trustee, or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Investing Fund Sub-Adviser will waive fees otherwise payable to the Investing Fund Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Fund Sub-Adviser, or an affiliated person of the Investing Fund Sub-Adviser, other than any advisory fees paid to the Investing Fund Sub-Adviser or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Investing Fund Sub-Adviser. In the event that the Investing Fund Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board of a Fund, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the independent directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund relying on the section 12(d)(1) relief will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–11892 Filed 5–17–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69575; File Nos. SR–NYSE–2012–57; SR–NYSEMKT–2012–58]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Disapprove Proposed Rule Changes Deleting NYSE Rules 95(c) and (d) and NYSE MKT Rules 95(c) and (d)—Equities and Related Supplementary Material

May 14, 2013.

On October 26, 2012, the New York Stock Exchange LLC (''NYSE'') and NYSE MKT LLC (''NYSE MKT'') (collectively, the ''Exchanges'') each filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] proposed rule changes (''Proposals'') to delete NYSE Rules 95(c) and (d) and related Supplementary Material and NYSE MKT Rules 95(c) and (d)—Equities and related Supplementary Material, respectively. The Proposals were published for comment in the **Federal Register** on November 15, 2012.[3] The Commission received no comment letters on the Proposals.

On December 21, 2012, the Commission extended the time period in which to either approve, disapprove, or to institute proceedings to determine whether to disapprove the Proposals, to February 13, 2013.[4] On February 13, 2013, the Commission instituted proceedings to determine whether to approve or disapprove the Proposals.[5]

Section 19(b)(2) of the Act [6] provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the Proposals not later than 180 days after the date of publication of notice of the filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the Proposals, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The Proposals were published for notice and comment in the **Federal Register** on November 15, 2012. May 14, 2013 is 180 days from that date, and July 13, 2013 is an additional 60 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the Proposals so that it has sufficient time to consider the Proposals. Specifically, as the Commission noted in the Order Instituting Proceedings, the Proposals raise the issue that elimination of the Rule 95(c) restriction on Floor brokers in connection with intra-day trading, as contemplated by the Proposals, may not be consistent with the Act in light of other benefits currently conferred by the Exchanges upon Floor brokers. For example, under the Exchanges' rules, a Floor broker is entitled to a potentially preferential ''parity'' allocation of shares of an Exchange execution, as compared with off-Floor market participants that place orders on the Exchanges' respective books.[7] Accordingly, a customer of a Floor broker engaged in intra-day trading, through an algorithmic proprietary trading strategy or otherwise, may have an advantage over market participants pursuing similar strategies directly on the Exchanges' respective books, by virtue of the Floor broker's parity status. The restrictions contained in Rules 95(c) and (d) today may serve to help counterbalance those advantages.[8]

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[9] designates July 12, 2013, as the date by which the Commission shall either approve or disapprove the Proposals.[10]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–11878 Filed 5–17–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69569; File No. SR–CBOE–2013–049]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

May 14, 2013.

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 May 1, 2013, 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 the 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

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 68185 (November 8, 2012), 77 FR 68188 (SR–NYSE–2012–57) (''NYSE Notice''); Release No. 68186 (November 8, 2012), 77 FR 68191 (SR–NYSEMKT–2012–58) (''NYSE MKT Notice'').

[4] *See* Securities Exchange Act Release No. 68522, 77 FR 77160 (December 31, 2012) (SR–NYSE–2012–57); Release No. 68521, 77 FR 77152 (SR–NYSEMKT–2012–58) (December 31, 2012).

[5] *See* Securities Exchange Act Release No. 68923 (February 13, 2013), 78 FR 11928 (February 20, 2013) (''Order Instituting Proceedings'').

[6] 15 U.S.C. 78s(b)(2).

[7] *See* NYSE Rule 72(c)(ii) (''For the purpose of share allocation in an execution, each single Floor broker, the DMM and orders collectively represented in Exchange systems (referred to herein as ''Book Participant'') shall constitute individual participants. The orders represented in the Book Participant in aggregate shall constitute a single participant and will be allocated shares among such orders by means of time priority with respect to entry.''); *see also* NYSE MKT Rule 72(c)(ii) (same).

[8] *See* Order Instituting Proceedings, *supra* note 5 at 11929, 11930.

[9] 15 U.S.C. 78s(b)(2).

[10] The Commission notes that July 13, 2013 is a Saturday and is, therefore, designating July 12, 2013 as the date by which the Commission shall either approve or disapprove the Proposals.

[11] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule with regards to the fees assessed for Floor Broker Trading Permits. Specifically, the Exchange proposes to add to Footnote 25 the statement that any Floor Broker Trading Permit Holder that executes an average of 15,000 customer open-outcry contracts per day (''CPD'') over the course of a calendar month in multiply-listed options classes will receive a rebate of $7,500 on that Floor Broker Trading Permit Holder's Floor Broker Trading Permit fees. The purpose of the proposed change is to encourage Floor Brokers to execute open-outcry customer trades in multiply-listed options, and the Exchange believes that giving Floor Brokers a break in their Floor Broker Trading Permit fees will provide such an incentive. The Exchange recognizes the competitive nature of maintaining a Floor Broker operation at CBOE and wants to provide a credit to Floor Brokers that engage in a significant amount of Floor Broker open outcry trading at CBOE.

The Exchange also proposes to make a technical, non-substantive change to the ''Stock Portion of Stock-Option Strategy Orders'' table in its Fees Schedule. The ''Notes'' section of that table includes the statement ''The per share fee assessed to customers for the stock portion of stock-option strategy orders will be waived through August 31, 2012.'' As August 31, 2012 is now in the past, the Exchange proposes to delete that statement.

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 requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. Providing Floor Broker Trading Permit Holders who execute an average of 15,000 customer open-outcry contracts per day in multiply-listed options classes with a rebate of $7,500 on that Floor Broker Trading Permit Holder's Floor Broker Trading Permit fees is reasonable because it allows the qualifying Floor Brokers to pay lower Floor Broker Trading Permit fees than they otherwise would have. The Exchange believes that it is equitable and not unfairly discriminatory to offer such a rebate to Floor Brokers only, and only those who execute 15,000 contracts per day (of customer, open-outcry trading in multiply-listed options classes) because Floor Brokers serve an important function in facilitating the execution of orders via open outcry, which as a price-improvement mechanism, the Exchange wishes to encourage and support. Further, the proposed change is designed to encourage the execution of orders via open outcry, which should increase volume, which would benefit all market participants (including Floor Brokers who do not hit the 15,000 contracts-per-day threshold) trading via open outcry (and indeed, this increased volume could make it possible for some Floor Brokers to hit the 15,000 contracts-per-day threshold). Also, only Floor Brokers are assessed Floor Broker Trading Permit fees.

The Exchange proposes limiting the rebate qualification to open outcry trading because Floor Brokers only engage in open outcry trading (at least in their capacities as Floor Brokers), and because, as previously stated, the Exchange wishes to support and encourage open-outcry trading, which allows for price improvement and has a number of positive impacts on the market system. The Exchange proposes limiting the rebate qualification to customer orders because market participants generally prefer to trade against customer trades, and encouraging customer trading in this manner should provide such market participants with more customer orders with which to trade. Further, the options industry has a long history of promoting customer orders through rebates and other preferential fee structures. The Exchange proposes limiting the rebate qualification to multiply-listed options classes because the Exchange expended considerable resources developing its proprietary, singly-listed products and therefore does not desire to offer this rebate associated with such products.

The Exchange believes the proposed rule change to delete the outdated statement in the ''Notes'' section of the ''Stock Portion of Stock-Option Strategy Orders'' table is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation [sic] transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed deletion would prevent potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change will impose an unnecessary or inappropriate burden on intramarket competition because, while it is limited to Floor Brokers (and only those who hit the 15,000-contract-per-day threshold), Floor Brokers serve an important function in facilitating the execution of orders via open outcry, which as a price-improvement mechanism, the Exchange wishes to encourage and support. Further, the proposed change is designed to encourage the execution of orders via open outcry, which should increase volume, which would benefit all market participants (including Floor Brokers who do not hit the 15,000 contracts-per-day threshold) trading via open outcry (and indeed, this increased volume could make it possible for some Floor Brokers to hit the 15,000 contracts-per-day threshold). Also, only Floor Brokers are assessed Floor Broker Trading Permit fees. The Exchange does not believe that the proposed change will impose an unnecessary or inappropriate burden on intermarket competition because it only applies to CBOE Floor Brokers. To the extent that this rebate proves attractive to Floor Brokers on other options exchanges, or its results prove attractive to market participants on other exchanges, such Floor Brokers

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78f(b)(5).

or market participants may elect to become Floor Brokers or market participants at CBOE.

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) of the Act[6] and paragraph (f) of Rule 19b–4[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2013–049 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–2013–049. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–049, and should be submitted on or before June 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–11896 Filed 5–17–13; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69571; File No. SR–NSCC–2013–05]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Require that All Locked-in Trade Data Submitted to It for Trade Recording be Submitted in Real-Time

May 14, 2013.

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 April 30, 2013, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by NSCC. On May 14, 2013, NSCC filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified, from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

NSCC is proposing to modify its Rules to require that all locked-in trade data submitted to NSCC for trade recording be submitted in real-time, as defined below, and to prohibit pre-netting and other practices that prevent real-time trade submission.

II. Clearing Agency'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 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.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is for NSCC to modify its Rules to require that all locked-in trade data submitted to NSCC for trade recording be submitted in real-time,[5] and to prohibit pre-netting and other practices that prevent real-time trade submission.

According to NSCC, the majority of all transactions processed at NSCC are submitted on a locked-in basis by self-regulatory organizations (''SROs'') (including national and regional exchanges and marketplaces) and Qualified Special Representatives (''QSRs'').[6] Currently, NSCC data reveals

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, NSCC modified Exhibit 5 to the original proposed rule change filing to correct a typographical error in the text of its Rules & Procedures (''Rules'') related to the proposed rule change.

[4] The Commission has modified the text of the summaries prepared by NSCC.

[5] The term ''real-time,'' when used with respect to trade submission, will be defined in Procedure XIII (Definitions) of NSCC's Rules as the submission of such data on a trade-by-trade basis promptly after trade execution, in any format and by any communication method acceptable to NSCC.

[6] QSRs are NSCC Members that either (i) operate an automated execution system where they are always the contra side of every trade, (ii) are the parent or affiliate of an entity operating such an automated system, where they are the contra side of every trade, or (iii) clear for a broker-dealer that

that all exchanges [7] and some QSRs submit trades executed on their respective markets in real-time, representing approximately 91% of the locked-in trades submitted to NSCC today. The proposed rule change would require that all locked-in trades submitted for trade recording by SROs and QSRs be submitted to NSCC in real-time.[8]

NSCC is also proposing to prohibit practices that preclude real-time submission, such as pre-netting. Typically, pre-netting is done on a bilateral basis between a QSR and its customer, both NSCC Members. Any pre-netting practices—whether in the form of ''summarization'' (i.e., technique in which the clearing broker nets all trades in a single CUSIP by the same correspondent broker into fewer submitted trades), ''compression'' (i.e., technique to combine submissions of data for multiple trades to the point where the identity of the party actually responsible for the trades is masked), netting, or any other practice that combines two or more trades prior to their submission to NSCC (collectively, ''pre-netting'')—prevent the submission to NSCC of transactions on a trade-by-trade basis, and cause submitting firms to delay submission of their trades. According to NSCC, these practices disrupt NSCC's ability to accurately monitor market and credit risks as they evolve during the trading day. Therefore, NSCC's proposal will prohibit pre-netting activity on the part of entities submitting original trade data on a locked-in basis.[9] The rules of NSCC's affiliate Fixed Income Clearing Corporation (''FICC'') currently prohibit such activity, and this proposed rule change would align NSCC's trade submission rules with those of FICC.[10]

NSCC does not expect the proposed rule changes to impact trade volumes significantly. According to NSCC, the majority of trades are currently being submitted to NSCC in real-time on a trade-by-trade basis, and NSCC is operationally capable of managing trade volumes that are multiple times larger than the historical peak volumes. NSCC's trade capture application, Universal Trade Capture, provides contract information to Members in real-time. Receipt of trade data in real-time will enable NSCC to record, and report to Members, trade data as it is received by the marketplaces, thereby promoting intra-day reconciliation of transactions at the Member level.

In the wake of recent industry disruptions, industry participants have been focused on developing controls to address the risks that arise from technology issues. NSCC believes that technology issues that could potentially cause significant disruptions and losses have become more likely in the securities markets that have leveraged technology advances to move to higher frequency trading environment. A comment letter submitted to the Commission in advance of the its Technology and Trading Roundtable, held in October 2012, and signed by a number of industry participants including SROs, broker-dealers, and buy-side firms, supported this proposed rule change as a crucial component of the industry controls that could increase market transparency and ultimately mitigate risks associated with high-frequency trading and related technology.[11]

As a central counterparty, NSCC contributes to market stability by interposing itself between counterparties to financial transactions and thereby reducing the risk faced by market participants. NSCC believes the proposed rule change will align NSCC's Rules with the trend in risk mitigation to move towards real-time trade submission and processing. NSCC believes the proposal will also support NSCC's critical role in maintaining financial stability by reducing the operational risk that results from locked-in trade data not being submitted to NSCC in real-time, particularly from firms that delay trade submission so as to pre-net their data. For example, receipt of locked-in trade data on a real-time basis will permit NSCC's risk management processes to monitor trades closer to trade execution on an intra-day basis, and identify and risk manage any issues relating to excessive exposure earlier in the day. NSCC will also be able to provide safe storage for real-time trade data, mitigating the risk that an event that occurs after trade execution and disrupts trade input will significantly delay completion of those trades or may even cause trade data to be lost.

While the proposed rule change will require some QSRs to enhance their trade submission systems, and could cause increased fees for those NSCC Members that pre-net their trade data so as to reduce clearance fees, NSCC believes the significant risk mitigation benefits of this proposal outweigh any temporary burdens or increased costs that may result. As a user-owned industry utility and a registered clearing agency, NSCC believes it must appropriately allocate the costs of its services in order to maintain a fee schedule that is fair and equitable among its participants. According to NSCC, enabling Members to persist in pre-netting practices permits those participants to evade paying their fair share of NSCC's costs, rendering NSCC's fee schedule, as currently applied, inequitable to the firms for whom trades are submitted in real-time without any pre-netting. Further, over the past few years, NSCC has adjusted its fee schedule to give more weight to ''value transacted'' and less weight to ''units processed,'' which NSCC believes will reduce the impact of this rule change on Members' fees.

Implementation Timeframe

Pending Commission approval of this proposed rule change, Members will be advised of the implementation date through issuance of an NSCC Important Notice. The proposed rule change will not be implemented earlier than seven (7) months from the date of Commission approval.

Proposed Rule Changes

NSCC proposes to amend Rule 7 (Comparison and Trade Recording Operation), Procedures II (Trade Comparison and Recording Service), IV (Special Representative Service), and XIII (Definitions) of its Rules in order to

operates such a system and the subscribers to the system acknowledge the clearing Member's role in the clearance and settlement of these trades.

[7] One executing market with very low trade volume does not yet submit trades in real-time.

[8] NSCC is not at this time modifying Procedure III (Trade Recording Service (Interface Clearing Procedures)) of its Rules, so files submitted to NSCC by The Options Clearing Corporation (''OCC'') relating to option exercises and assignments (Procedure III, Section D—Settlement of Option Exercises and Assignments) will not be required to be submitted in real-time. OCC's process of assigning option assignments is and will continue to be an end-of-day process.

[9] Trades executed in the normal course of business between a Member that clears for other broker-dealers, and its correspondent, or between correspondents of the Member, which correspondent(s) is not itself a Member and settles such obligations through such clearing Member (i.e., ''internalized trades'') are not required to be submitted to the Corporation and shall not be considered to violate the pre-netting prohibition.

[10] *See, e.g.,* GSD Rule 11 (Netting System), Section 3 (''All trade data required to be submitted to the Corporation under this Section must be submitted on a trade-by-trade basis with the original terms of the trades unaltered. A Member or any of its Affiliates may not engage in the Pre-Netting of Trades prior to their submission to the Corporation in contravention of this section. In addition, a Member or any of its Affiliates may not engage in any practice designed to contravene the prohibition against the Pre-Netting of Trades.''), *http://dtcc.com/legal/rules_proc/FICC-Government_Security_Division_Rulebook.pdf. See also* Order Granting Approval of a Proposed Rule Change Relating to Trade Submission Requirements and Pre-Netting, Release No. 34–51908 (June 22, 2005), 70 FR 37450 (June 29, 2005).

[11] Comment Letter signed by NYSE Euronext dated Sept. 28, 2012 (*http://www.sec.gov/comments/4-652/4652-17.pdf).*

require that all locked-in trades submitted for trade recording by SROs and QSRs be submitted on a real-time basis, and to make clear that locked-in trade data from SROs and QSRs must be submitted on a trade-by-trade basis, in the original form in which they are executed, and that pre-netting and similar practices are prohibited.

In light of these proposed changes, Addendum N (Interpretation of the Board of Directors: Locked-In Data From Qualified Special Representatives) of NSCC's Rules will be deleted, as it will be no longer relevant.

2. Statutory Basis

NSCC believes that the proposed rule change is consistent with the requirements of the Act, specifically Section 17A(b)(3)(F),[12] and the rules and regulations thereunder because it will reduce operational, market, and credit risk to both NSCC and its Members and promote the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC believes the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The submission requirements proposed in this filing will be applied to all locked-in trades submitted to NSCC, regardless of the type of submitting entity. According to NSCC the majority of NSCC's trade volume is currently submitted to NSCC in real-time and the proposed rule change reflects an industry trend for risk mitigation to move towards real-time trade submission and processing. The proposed rule change facilitates the orderly clearance and settlement of securities transactions by addressing the operational risks that are caused by the practices it seeks to prohibit, as outlined in Item II(A) above. As such, according to NSCC, the business continuity and risk-mitigation benefits of the proposed rule change render not unreasonable or inappropriate any burden on competition that such submission requirements could be regarded as imposing.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

While written comments relating to the proposed rule change have not yet been solicited with respect to this filing, the proposed rule changes described herein were subject of a prior rule filing that was filed with the Commission in 2006 as File No. SR–NSCC–2006–04 (''2006 Filing'').[13] NSCC received a number of public comments to the 2006 Filing. NSCC submitted a public response to each of the comments in 2006.[14] The 2006 Filing was officially withdrawn on December 29, 2011.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.[15] The clearing agency shall post notice on its Web site of proposed changes that are implemented.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NSCC–2013–05 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 No. SR–NSCC–2013–05. 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 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://dtcc.com/legal/rule_filings/nscc/2013.php.* 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–NSCC–2013–05 and should be submitted on or before June 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–11918 Filed 5–17–13; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] Release No. 34–53742 (Apr. 28, 2006), 71 FR 26804 (May 8, 2006).

[14] Response Letter from NSCC dated Aug. 18, 2006 (*http://www.sec.gov/comments/sr-nscc-2006-04/nscc200604-9.pdf*).

[15] NSCC also filed the proposals contained in this proposed rule change as an advance notice (File No. SR–NSCC–2013–805) pursuant to Section 806(e)(1) of the Clearing Supervision Act and Rule 19b–4(n)(1)(i) thereunder. 12 U.S.C. 5465(e)(1); 17 CFR 240.19b–4(n)(i). Proposed changes filed under the Clearing Supervision Act may be implemented either: At the time the Commission notifies the clearing agency that it does not object to the proposed change and authorizes its implementation, or, if the Commission does not object to the proposed change, within 60 days of the later of (i) the date that the advance notice was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. 12 U.S.C. 5465(e)(1)(G). The Commission will consider all public comments received on these proposed changes regardless of whether the comments are submitted to File No. SR–NSCC–2013–05 or File No. SR–NSCC–2013–805.

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69573; File No. SR–NYSEArca–2013–48]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Shares of iShares Dow Jones-UBS Roll Select Commodity Index Trust Pursuant to NYSE Arca Equities Rule 8.200

May 14, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 1, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 3, 2013, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 thereto, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of iShares Dow Jones-UBS Roll Select Commodity Index Trust (the ''Trust'') under NYSE Arca Equities Rule 8.200. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Arca Equities Rule 8.200, Commentary .02 permits the trading of Trust Issued Receipts (''TIRs'') either by listing or pursuant to unlisted trading privileges (''UTP'').[5] The Exchange proposes to list and trade the shares (the ''Shares'') of the Trust pursuant to NYSE Arca Equities Rule 8.200.

The Exchange notes that the U.S. Securities and Exchange Commission (''Commission'') has previously approved the listing and trading of other issues of TIRs on the American Stock Exchange LLC [6] and listing on NYSE Arca.[7] In addition, the Commission has approved other exchange-traded fund-like products linked to the performance of underlying commodities.[8]

The Shares represent units of beneficial interests in the Trust, as described in the Registration Statement.[9] The Trust is a Delaware statutory trust. The sponsor of the Trust is iShares © Delaware Trust Sponsor LLC (the ''Sponsor''), a Delaware limited liability company. The Trust is operated by the Sponsor, an indirect subsidiary of BlackRock, Inc. The Sponsor is a commodity pool operator registered with the Commodity Futures Trading Commission (''CFTC'') and a member of the National Futures Association (''NFA''). BlackRock Asset Management International Inc., a Delaware corporation and an indirect subsidiary of BlackRock, Inc., is the sole member and manager of the Sponsor. BlackRock Institutional Trust Company, N.A., a national banking association, an indirect subsidiary of BlackRock, Inc., and an affiliate of the Sponsor, is the trustee of the Trust (the ''Trustee''). BlackRock Fund Advisors (the ''Adviser''),[10] a California corporation, an indirect subsidiary of BlackRock, Inc., and an affiliate of the Sponsor, serves as the commodity trading adviser of the Trust, is registered as a commodity trading adviser with the CFTC and is a member of the NFA.[11] State Street Bank and Trust Company, a trust company organized under the laws of Massachusetts, is the administrator (''Administrator'') of the Trust.

According to the Registration Statement, the investment objective of the Trust will be to seek investment results that correspond generally, but are not necessarily identical, to the performance of the Dow Jones-UBS Roll Select Commodity Index Total Return (the ''Index''), which reflects the returns on a fully collateralized investment in the Dow Jones-UBS Roll Select Commodity Index (''DJ–UBS Roll Select CI''), before the payment of expenses and liabilities of the Trust. The DJ–UBS Roll Select CI is calculated based on the same commodities, though not always the same futures contracts, that are included in the Dow Jones-UBS Commodity Index (the ''DJ–UBS CI''). The DJ–UBS CI is a liquidity- and production-weighted index of the prices of a diversified group of futures contracts on physical commodities. The DJ–UBS CI forms the base commodities index from which the DJ–UBS Roll Select CI and the Index are derived.

According to the Registration Statement, the assets of the Trust will

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] In Amendment No. 1, the Exchange made a technical correction and clarified that UBS Securities has implemented a fire wall with respect to its personnel regarding access to information concerning, among other things, the calculation of the values of the Index, DJ–UBS CI, and DJ–UBS Roll Select CI (as such terms are defined below).

[5] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to TIRs that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[6] *See, e.g.,* Securities Exchange Act Release No. 58161 (July 15, 2008), 73 FR 42380 (July 21, 2008) (SR–Amex–2008–39) (order approving amendments to Amex Rule 1202, Commentary .07 and listing on Amex of 14 funds of the Commodities and Currency Trust).

[7] *See, e.g.,* Securities Exchange Act Release No. 58457 (September 3, 2008), 73 FR 52711 (September 10, 2008) (SR–NYSEArca–2008–91) (order approving listing on NYSE Arca of 14 funds of the Commodities and Currency Trust).

[8] *See, e.g.,* Securities Exchange Act Release No. 56932 (December 7, 2007), 72 FR 71178 (December 14, 2007) (SR–NYSEArca–2007–112) (order granting accelerated approval to list iShares S&P GSCI Commodity-Indexed Trust).

[9] *See* the pre-effective amendment to the registration statement on Form S–1 for the Trust, dated February 8, 2013 (File No. 333–178376) relating to the Shares (the ''Registration Statement''). The discussion herein relating to the Trust and the Shares is based, in part, on the Registration Statement. Terms used but not defined herein are used as defined in the Registration Statement.

[10] The Adviser is not a broker-dealer but is affiliated with a broker-dealer and has implemented a firewall with respect to such broker-dealer affiliate as well as procedures designed to prevent the use and dissemination of material non-public information regarding the assets of the Trust.

[11] According to the Sponsor, the Sponsor will be responsible for the overall management of the Trust and the Trustee will be responsible for the day-to-day administration of the Trust. The Adviser will act as the commodity trading advisor for the Trust with discretionary authority to make determinations with respect to the Trust's assets, but will not engage in any activities designed to obtain a profit from, or ameliorate losses caused by, changes to the level of the underlying index. The Sponsor represents that it will implement and maintain procedures designed to prevent the use and dissemination of material non-public information regarding the assets of the Trust.

consist of long positions in Futures Exchange [12]-traded index futures contracts of various expirations (''Index Futures'') [13] on the DJ–UBS Roll Select CI, together with cash, U.S. Treasury securities or other short-term securities and similar securities that are eligible as margin deposits for those Index Futures positions (''Collateral Assets'').[14] The Trust is expected to roll out of existing positions and establish new positions in Index Futures on an ongoing basis.[15]

According to the Registration Statement, in order to collateralize its Index Futures positions and to reflect the U.S. Treasury component of the Index, the Trust will hold Collateral Assets, from which it will post margin to its clearing futures commission merchant (the ''Clearing FCM''), in an amount equal to the margin required by the relevant Futures Exchange, and transfer to its Clearing FCM any additional amounts that may be separately required by the Clearing FCM.[16] Any Collateral Assets not required to be posted as margin with the Clearing FCM will be held in the Trust's accounts established at its Administrator.

According to the Registration Statement, the Trust will be a passive investor in Index Futures and the Collateral Assets held to satisfy applicable margin requirements on those Index Futures positions. At any time when Index Futures of more than one expiration date are listed on the Futures Exchange, the Sponsor will determine, pursuant to the terms of the trust agreement, which Index Futures of a given expiration will be transferred in connection with either the creation or redemption of Shares. The Adviser will not engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the level of the Index or the DJ–UBS Roll Select CI or the value of the Collateral Assets.

According to the Registration Statement, the profit or loss on the Trust's Index Futures positions should correlate with increases and decreases in the value of the DJ–UBS Roll Select CI, although this correlation is not expected to be exact. The return on the Index Futures, together with interest on the Collateral Assets, is expected to result in a total return that corresponds generally, but is not identical, to the Index.

The Index, DJ–UBS CI and DJ–UBS Roll Select CI

According to the Registration Statement, the Index reflects the value of the DJ–UBS Roll Select CI together with the returns on specified U.S. Treasury securities that are deemed to have been held to collateralize a hypothetical long position in the futures contracts comprising the DJ–UBS Roll Select CI.

According to the Registration Statement, the DJ–UBS Roll Select CI is calculated based on the same commodities, though not always the same futures contracts, that are included in the DJ–UBS CI, which is a liquidity- and production-weighted index of the prices of a diversified group of futures contracts on physical commodities. The DJ–UBS Roll Select CI seeks to minimize the effect of contango and maximize the effect of backwardation by selecting replacement futures contracts that exhibit the most backwardation or least contango among those eligible futures contracts with delivery months of up to 273 calendar days until expiration.[17]

According to the Registration Statement, the DJ–UBS Roll Select CI incorporates the economic effect of ''rolling'' the futures contracts included in the applicable index and the DJ–UBS CI reflects the economic effect of ''rolling'' futures contracts into front-month futures contracts. ''Rolling'' a futures contract means closing out a position in an expiring futures contract and establishing an equivalent position in a new futures contract on the same commodity.

According to the Registration Statement, the DJ–UBS Roll Select CI differs from the DJ–UBS CI in that it does not roll into the futures contract with the nearest designated delivery month. Rather, the DJ–UBS Roll Select CI rolls into those eligible futures contracts with delivery months of up to 273 calendar days until expiration that exhibit the most backwardation or that exhibit the least contango.

The DJ–UBS Roll Select CI, the DJ–UBS CI and the Index are administered, calculated and published by UBS Securities LLC (''UBS Securities'') and DJI Opco, LLC, a wholly-owned subsidiary of S&P Dow Jones Indices LLC (''S&P Dow Jones Indices'' and, together with UBS Securities, the ''Index Co-Sponsors'').[18]

The DJ–UBS CI

According to the Registration Statement, the DJ–UBS CI, from which the DJ–UBS Roll Select CI is based, was created by AIG International Inc. in 1998 and acquired by UBS Securities in May 2009, at which time UBS Securities and Dow Jones entered into a joint marketing agreement to market the DJ–UBS CI and related indices. Dow Jones subsequently assigned its interest in the joint marketing agreement to CME Indexes. The Index Co-Sponsors are together responsible for calculating the DJ–UBS CI and related indices and sub-indices, including the Index and the DJ–UBS Roll Select CI.

According to the Registration Statement, the DJ–UBS CI is a benchmark index composed of futures contracts on the underlying physical commodities, the selection and weighting of which are currently determined based on the five-year average of the trading volume, adjusted by the historic U.S. dollar value of the futures contract designated for inclusion in the DJ–UBS CI, and the five-year average of production figures, adjusted

[12] As used herein, ''Futures Exchange'' means the Chicago Mercantile Exchange (''CME'') or one of the CME Group Inc.'s other designated contract markets, or any additional or successor designated contract markets through which the Trust trades Index Futures (as defined herein). The designated contract markets of the CME Group Inc. are the CME, Chicago Board of Trade (''CBOT''), New York Mercantile Exchange Inc. (''NYMEX'') and Commodity Exchange, Inc. (''COMEX'').

[13] The Trust's Index Futures will be subject to the rules of the relevant Futures Exchange, which will initially be CME. The Index Futures will initially trade on GLOBEX, the CME's electronic trading system, and are not expected to trade through open outcry on the floor of the CME.

[14] The Sponsor represents that the Trust will invest in Index Futures and Collateral Assets, in a manner consistent with the Trust's investment objective and not to achieve additional leverage.

[15] The Index Futures initially held by the Trust will have quarterly expirations and be listed for trading by the CME. Subsequent Index Futures held by the Trust may have longer or shorter expirations, different terms, and may be listed on other Futures Exchanges.

[16] When establishing positions in Index Futures, the Trust will be required to deposit initial margin with a value of approximately 3% to 10% of the value of each Index Futures position at the time it is established. These margin requirements are subject to change from time to time by the Exchange or the Clearing FCM. On a daily basis, the Trust will be obligated to pay, or entitled to receive, variation margin in an amount equal to the change in the daily settlement level of its Index Futures positions.

[17] Markets for futures contracts can exhibit ''backwardation,'' which means that futures contracts with distant delivery months are priced lower than those with nearer delivery months, or can exhibit ''contango,'' which means that futures contracts with distant delivery months are priced higher than those with nearer delivery months.

[18] According to the Sponsor, S&P Dow Jones Indices and its subsidiary DJI Opco, LLC are not broker-dealers and UBS Securities is a broker-dealer. UBS Securities has implemented a fire wall with respect to its personnel regarding access to information concerning the composition and/or changes to the Index, DJ–UBS CI and DJ–UBS Roll Select CI and the calculation of the values of the foregoing indexes, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Index, DJ–UBS CI and DJ–UBS Roll Select CI. The Index Co-Sponsors have implemented and maintain procedures designed to prevent the use and dissemination of material non-public information regarding the DJ–UBS Roll Select CI, the DJ–UBS CI and the Index.

by the historic U.S. dollar value of the futures contract designated for inclusion in the DJ–UBS CI. For each of the included commodities, specified futures contracts with specified delivery dates are designated for inclusion in the DJ–UBS CI. The DJ–UBS CI is reweighted and rebalanced annually, on a price-percentage basis, to reflect changes in trading volume and production figures.

According to the Registration Statement, the DJ–UBS CI reflects the increased or decreased return associated with ''rolling'' futures contracts. The DJ–UBS CI reflects the economic impact of the roll process by reducing the weights applied to expiring futures contracts while correspondingly increasing the weights applied to the futures contracts that are replacing such expiring futures contracts. This roll simulation is generally conducted at the beginning of each month over the course of five business days, lasting from the sixth business day until the tenth business day of each month. The DJ–UBS CI conducts its roll simulations each month by rolling out of the designated futures contracts expiring in that month and rolling into those designated futures contracts with the next closest designated delivery month.

The DJ–UBS Roll Select CI

According to the Registration Statement, the DJ–UBS Roll Select CI implements its rolling methodology by selecting from the eligible contracts for each commodity on its applicable ''contract selection date,'' the contract that exhibits the greatest amount of backwardation or least amount of contango, on an annualized basis, relative to the contract with the immediately preceding delivery date on the same commodity. This is accomplished by first dividing the price of each eligible contract from the price of the contract immediately preceding such eligible contract, to determine the percentage difference between the two prices. Because this price difference may be affected by the relative time between the eligible contract and its immediately preceding contract, this price difference is multiplied by 365 and divided by the number of actual days between the delivery dates of the two contracts, to arrive at a measure of the relative annualized contango/backwardation, referred to as the ''annualized spread,'' exhibited between the eligible contract and the contract immediately preceding it. Based on a comparison of these annualized spreads, the eligible contract that has the highest annualized spread relative to its immediately preceding contract is the one selected as the contract for the DJ–UBS Roll Select CI to establish new positions in. This roll selection process generally occurs every month on the fourth business day of the month, subject to changes or adjustments to this process implemented by the Index Co-Sponsors.

According to the Registration Statement, the Index Futures in which the Trust will invest will be based on the DJ–UBS Roll Select CI. The DJ–UBS Roll Select CI is a version of the DJ–UBS CI that tries to mitigate the effects of contango arising from the rolling process. Rather than incorporating the economic effect of rolling into futures contracts with the next closest designated delivery month, the DJ–UBS Roll Select CI incorporates the economic effect of rolling into applicable futures contracts that exhibit the least contango or, if applicable, the most backwardation, in each case relative to the contracts of the immediately preceding delivery month.

Because the DJ–UBS Roll Select CI utilizes a different designated contract selection process than the DJ–UBS CI, the futures contracts comprising the DJ–UBS Roll Select CI at any particular time may have different delivery months than those comprising the DJ–UBS CI, and the levels of the DJ–UBS Roll Select CI and the DJ–UBS CI may correspondingly differ. In addition, as a result of this difference in rolling processes, both the performance of the DJ–UBS Roll Select CI and the DJ–UBS CI and the dollar-value weights of their respective underlying futures contracts are expected to differ over time.

Determination of DJ–UBS CI Index Constituents

According to the Registration Statement, the Index Co-Sponsors have established a two-tier oversight structure for the DJ–UBS CI, the DJ–UBS Roll Select CI and the Index comprised of the ''Supervisory Committee'' and the ''Advisory Committee.'' [19] The composition of the DJ–UBS CI is determined by UBS Securities each year under the supervision of, and in accordance with the procedures adopted by, the Supervisory Committee. The final composition of the DJ–UBS CI for each calendar year is subject to the approval of the Supervisory Committee in consultation with the Advisory Committee, and once this approval has been obtained, the new composition of the DJ–UBS CI is publicly announced, and takes effect in the month of January of the relevant calendar year.

The relative weight of a commodity eligible for inclusion in the DJ–UBS CI, or its commodity index percentage (''CIP''), is initially determined based on (i) the relative production percentages of the commodities eligible for inclusion in the DJ–UBS CI and (ii) the relative liquidity of the futures contracts that have been designated as the eligible reference contracts for those commodities. This initial CIP calculation is then adjusted to give effect to caps and floors on such CIPs and to adjust the weights for gold and silver, the relative production numbers of which, according to the Dow Jones-UBS Commodity Index℠ Handbook, last published by the Index Co-Sponsors as of May 2012, understate their economic significance.

According to the Registration Statement, the commodities and related designated futures contracts currently included in the DJ–UBS CI and their respective final CIPs for 2013 are as follows:

Commodity	Designated contract	Exchange*	Units	CIP** (percent)	Trading hours (E.T.)***
Aluminum	High Grade Primary Aluminum.	LME	25 metric tons	4.913	First session: 6:55AM to 7:00AM, 7:55AM to 8:00AM; second session: 10:15AM to 10:20AM, 10:55AM to 11:00AM.
Coffee	Coffee ''C''	ICE Futures U.S.	37,500 lbs	2.442	3:30AM to 2:00PM.
Copper	Copper	COMEX	25,000 lbs	7.277	6:00PM to 5:15PM Next Day.
Corn	Corn	CBOT	5,000 bushels	7.053	Sun–Fri: 8:00PM to 8:45 AM Next Day; Mon–Fri: 9:30AM to 2:15PM.

[19] The Supervisory Committee and the Advisory Committee are subject to procedures designed to prevent the improper use and dissemination of material, non-public information regarding the Index, DJ–UBS Roll Select CI and DJ–UBS CI.

Commodity	Designated contract	Exchange*	Units	CIP** (percent)	Trading hours (E.T.)***
Cotton	Cotton	ICE Futures U.S.	50,000 lbs	1.766	9:00PM to 2:30PM Next Day.
Crude Oil	Light, Sweet Crude Oil.	NYMEX	1,000 barrels	9.206	6:00PM to 5:15PM Next Day.
	Brent Crude Oil	ICE Futures U.S.	1,000 barrels	5.794	8:00PM to 6:00PM Next Day.
Gold	Gold	COMEX	100 troy oz.	10.819	6:00PM to 5:15PM Next Day.
Heating Oil	Heating Oil	NYMEX	42,000 gallons	3.519	6:00PM to 5:15PM Next Day.
Live Cattle	Live Cattle	CME	40,000 lbs	3.283	Mon: 10:05AM to 5:00PM; Tue–Thurs: 6:00PM to 5:00PM Next Day; Fri: 6:00PM to 2:55PM Next Day.
Lean Hogs	Lean Hogs	CME	40,000 lbs	1.900	Mon: 10:05AM to 5:00PM; Tue–Thurs: 6:00PM to 5:00PM Next Day; Fri: 6:00PM to 2:55PM Next Day.
Natural Gas	Henry Hub Natural Gas.	NYMEX	10,000 mmbtu	10.424	6:00PM to 5:15PM Next Day.
Nickel	Primary Nickel	LME	6 metric tons	2.244	First session: 6:15AM to 6:20AM, 8:00AM to 8:05AM; second session: 10:25AM to 10:30AM, 11:05AM to 11:10AM.
Silver	Silver	COMEX	5000 troy oz.	3.898	6:00PM to 5:15PM Next Day.
Soybeans	Soybeans	CBOT	5,000 bushels	5.495	Sun–Fri: 8:00PM to 8:45 AM Next Day; Mon–Fri: 9:30AM to 2:15PM.
Soybean Meal	Soybean Meal	CBOT	100 short tons	2.607	Sun–Fri: 8:00PM to 8:45 AM Next Day; Mon–Fri: 9:30AM to 2:15PM.
Soybean Oil	Soybean Oil	CBOT	60,000 lbs	2.743	Sun–Fri: 8:00PM to 8:45 AM Next Day; Mon–Fri: 9:30AM to 2:15PM.
Sugar	World Sugar No. 11	ICE Futures U.S.	112,000 lbs	3.884	2:30AM to 2:00PM.
Unleaded Gasoline	Reformulated Blendstock for Oxygen Blending.	NYMEX	42,000 gallons	3.461	6:00PM to 5:15PM Next Day.
Wheat (Chicago)	Soft Wheat	CBOT	5,000 bushels	3.433	Sun–Fri: 8:00PM to 8:45 AM Next Day; Mon–Fri: 9:30AM to 2:15PM.
Wheat (Kansas)	Hard Red Winter Wheat.	KCBOT	5,000 bushels	1.321	Sun–Fri: 8:00PM to 8:45 AM Next Day; Mon–Fri: 9:30AM to 2:15PM.
Zinc	Special High Grade Zinc.	LME	25 metric tons	2.519	First session: 7:10AM to 7:15AM, 7:50AM to 7:55AM; second session: 10:05AM to 10:10AM, 10:45AM to 10:50AM.

* ''LME'' refers to the London Metal Exchange, and ''ICE Futures U.S.'' refers to ICE Futures U.S., Inc.
** Rounded to the nearest thousandth of a percentage. May not total to 100% due to rounding.
*** Trading hours for the CME, CBOT, NYMEX and COMEX represent weekday electronic trading hours through CME Globex (electronic platform). Trading hours for LME represent ring trading times during each of first and second sessions; excludes kerb trading times.

Calculation of the Index, DJ–UBS CI and DJ–UBS Roll Select CI

According to the Registration Statement, the level of the DJ–UBS CI was set to be equal to 100 as of December 31, 1990. Subsequent levels of the DJ–UBS CI are determined by multiplying the level of the DJ–UBS CI as of the previous day by a fraction equal to (i) the weighted average value (''WAV'') of the DJ–UBS CI as of the current day divided by (ii) the WAV of the DJ–UBS CI as of the previous day, subject to adjustment for roll periods as described below. The WAV of the DJ–UBS CI on any given day is calculated by summing the products of the settlement prices of the designated futures contracts for each commodity multiplied by the commodity index multiplier (''CIM'') of such designated contract.

According to the Registration Statement, the CIMs of the designated contracts in the DJ–UBS CI are determined annually, generally on the fourth business day of each year (the date of such determination, the ''CIM Determination Date''). On the CIM Determination Date, initial CIMs (''ICIMs'') are calculated for each designated contract by multiplying such designated contract's CIP by 1,000, then dividing such product by the designated contract's settlement price as of the CIM Determination Date. To determine the final CIM for each designated contract for the new year, each ICIM is multiplied by an adjustment factor, which is a fraction equal to (i) the WAV of the DJ–UBS CI as of the CIM Determination Date, as calculated using the CIMs from the prior year, divided by (ii) 1,000. This adjustment factor is intended to preserve WAV continuity from one year to the next.

According to the Registration Statement, during roll periods, which generally occur during the sixth through tenth business days of each month, the level of the DJ–UBS CI is calculated using a blended WAV formula that reflects the fact that the DJ–UBS CI is rolling out of expiring contracts and into replacement contracts. The WAV associated with the existing index components (''Old WAV'') begins weighted at 100% as of the business day preceding the roll period and decreases by 20% on each subsequent business

day until reduced to zero; it has no further effect on the level of the DJ–UBS CI by the fifth business day of such roll period. The WAV associated with the new index components (''New WAV'') begins weighted at 0% as of the business day preceding the roll period and increases by 20% on each subsequent business day such that by the fifth business day of such roll period, the level of the DJ–UBS CI is determined based entirely on the New WAV.

Accordingly, during a roll period, the level of the DJ–UBS CI on any given day can be calculated as the product of the level of the DJ–UBS CI as of the previous day, multiplied by a fraction equal to: (i) Old WAV × (1 − 0.2n) + New WAV × (0.2n), using the Old WAV and New WAV values as of such day, divided by (ii) Old WAV × (1 − 0.2n) + New WAV × (0.2n), using the Old WAV and New WAV values as of the previous day. The variable ''n'' in this equation represents the number of business days that have elapsed for such roll period through and including the relevant date of determination. According to the Registration Statement, the DJ–UBS Roll Select CI will be calculated using the same general methodology as the DJ–UBS CI and using the same CIPs and CIMs used in connection with calculating the DJ–UBS CI. However, because the roll process for the DJ–UBS Roll Select CI is different from that of the DJ–UBS CI, its constituent futures contracts may differ from those included in the DJ–UBS CI. This difference is expected to cause the dollar-value weights and the weighted average value of the futures contracts included in each index to differ over time, and, as a result, cause the performance of the two indices to diverge.

According to the Registration Statement, the Index combines the returns of the DJ–UBS Roll Select CI with the returns of the most recent weekly auction high rate for three-month U.S. Treasury bills, as reported on the Web site *http://publicdebt.treas.gov/AI/OFBills* under the column headed ''Discount Rate %'' published by the Bureau of the Public Debt of the U.S. Treasury, or any successor source. The level of the Index, which was set at a hypothetical level of 100 as of December 31, 1990, can be calculated on any given day as the product of the level of the Index as of the previous day, multiplied by the sum of (i) 1.00 plus (ii) the positive or negative percentage return on the DJ–UBS Roll Select CI on such day plus (iii) the daily return based on the auction high rate for three-month U.S. Treasury bills described above.

The Supervisory Committee and the Advisory Committee

According to the Registration Statement, the Supervisory Committee is comprised of three members, two of whom are appointed by UBS Securities and one of whom is appointed by S&P Dow Jones Indices, and makes all final decisions relating to the DJ–UBS CI, taking into consideration any advice and recommendations of the Advisory Committee. The Advisory Committee consists of six to twelve members drawn from the financial and academic communities. Both the Supervisory and Advisory Committees meet annually to consider any changes to be made to the DJ–UBS CI for the coming year. These committees may also meet at such other times as may be necessary for the purposes of their respective responsibilities in connection with the oversight of the DJ–UBS CI.

The Supervisory Committee has a significant degree of discretion in exercising its supervisory duties with respect to the DJ–UBS CI and related indices and sub-indices, including the Index and the DJ–UBS Roll Select CI.

Additional information regarding the composition of the Index, DJ–UBS Roll Select CI, DJ–UBS CI and their index methodologies is included in the Registration Statement and at the Index Co-Sponsors' Web site, *www.djindexes.com.*

Net Asset Value

According to the Registration Statement, the Trustee will determine the net asset value of the Trust and the net asset value per Share (''NAV'') as of 4:00 p.m. (Eastern Time (''E.T.'')) on each Business Day [20] on which the Exchange is open for regular trading, as soon as practicable after that time.

According to the Registration Statement, the Trustee will value the Trust's long positions in Index Futures on the basis of that day's settlement prices for the Index Futures held by the Trust, as announced by the applicable Futures Exchange. The value of the Trust's positions in any particular Index Future will equal the product of (a) The number of such Index Futures of such expiration owned by the Trust, (b) the settlement price of such Index Futures on the date of calculation and (c) the multiplier of such Index Futures.[21] If there is no announced settlement price for a particular Index Future contract on a Business Day, the Trustee will use the most recently announced settlement price unless the Trustee, in consultation with the Sponsor, determines that such price is inappropriate as a basis for valuation. The daily settlement prices for the Index Futures initially held by the Trust will be established by the CME shortly after the close of trading for such Index Futures, which is generally 2:40 p.m. E.T.

According to the Registration Statement, the Trustee will value all other holdings of the Trust at (a) current market value, if quotations for such property are readily available, or (b) fair value, as reasonably determined by the Trustee, if the current market value cannot be determined.

According to the Registration Statement, once the value of the Index Futures and interest earned on the Trust's Collateral Assets has been determined, the Trustee will subtract all accrued expenses and liabilities of the Trust as of the time of calculation in order to calculate the net asset value of the Trust.

According to the Registration Statement, once the net asset value of the Trust has been calculated, the Trustee will determine the NAV by dividing the net asset value of the Trust by the number of Shares outstanding at the time the calculation is made. Any changes to NAV that may result from creation and redemption activity occurring on any Business Day will not be reflected in NAV until the following Business Day.

Creation and Redemption of Shares

According to the Registration Statement, the Trust will create and redeem Shares from time to time in one or more ''Baskets'' of 50,000 Shares each. Baskets may be created or redeemed only by authorized participants.

According to the Registration Statement, Baskets will be typically issued or redeemed only in exchange for an amount of Index Futures and cash (or, in the discretion of the Sponsor, other Collateral Assets) equal to the ''Basket Amount'' for the Business Day on which the creation or redemption order is received by the Trustee.[22] The

[20] A ''Business Day'' is defined as a day (1) on which none of the following occurs: (a) the Exchange is closed for regular trading, (b) a Futures Exchange is closed for regular trading or (c) the Federal Reserve wire transfer system is closed for cash wire transfers, or (2) that the Trustee determines that it is able to conduct business.

[21] According to the Adviser, the multiplier reflects the contract size for a futures contract. The multiplier for the Index Futures is expected to be $100.

[22] The ''Basket Amount'' is the amount of Index Futures and cash (or, in the discretion of the Sponsor, other Collateral Assets), that an authorized

Continued

Basket Amount for a Business Day will have a per Share value equal to the NAV as of such day, and the assets included in the Basket Amount will be valued in the same manner and on the same basis as the Trust's NAV calculations for its assets generally. Creation orders or redemption requests received after 2:40 E.T. will not be deemed received until the following Business Day. In limited circumstances and subject to the approval of the Trustee, Baskets may be created for cash equal to the NAV of the Shares constituting a Basket as determined on the date the related creation order was received, plus the costs incurred by the Trust in establishing the corresponding Index Futures positions and acquiring the related Collateral Assets. Creation orders for Baskets paid for solely in cash that are received after 10:00 a.m. E.T. will be deemed received as of the following Business Day. The Trustee will notify the authorized participants of the Basket Amount on each Business Day.

According to the Registration Statement, creation and redemption of interests in the Trust generally will be effected through an ''EFRP,'' which is an exchange for related positions that involve contemporaneous transactions in futures contracts and the underlying cash commodity or a closely related commodity. In a typical EFRP, the buyer of the futures contract sells the underlying commodity to the seller of the futures contract. The CME permits the execution of EFRPs consisting of simultaneous purchases (sales) of Index Futures and sales (purchases) of Shares. This mechanism generally is expected to be used by the Trust in connection with the creation and redemption of Baskets.

Specifically, according to the Registration Statement, it is anticipated that an authorized participant requesting the creation of additional Baskets typically will transfer Index Futures and cash (or, in the discretion of the Sponsor, other Collateral Assets) to the Trust in return for Shares. If an EFRP is executed in connection with the redemption of one or more Baskets, an authorized participant will transfer to the Trust the interests being redeemed and the Trust will transfer to the authorized participant Index Futures and cash or other Collateral Assets. The Trust may include Index Futures with different terms and expirations in the creation and redemption of Baskets, and the Index Futures included in creation Baskets may differ from those included in redemption Baskets.

It is expected that delivery of the Shares or, in the case of a redemption, the Index Futures and cash or other Collateral Assets, will be made against transfer of consideration or Baskets, as the case may be, on the next Business Day following the Business Day on which the creation order or redemption request is received by the Trustee, which is referred to as a T+1 settlement cycle.

When a Basket is created, upon the transfer of (1) the required consideration of Index Futures in the amounts and of the type specified by the Trustee, cash (or, in the discretion of the Sponsor, other Collateral Assets) in the amounts specified to the Trustee, in each case to the accounts specified by the Trustee, and (2) any and all transaction fees associated with creations per Basket, the Trustee will deliver the appropriate number of Baskets to the Depository Trust Company (''DTC'') account of the authorized participant.

According to the Registration Statement, when a Basket is redeemed, after the delivery by the authorized participant to the Trustee's DTC account of the total number of Shares to be redeemed by an authorized participant, the Trustee will deliver to the order of the redeeming authorized participant redemption proceeds consisting of Index Futures and cash (or, in the discretion of the Sponsor, other Collateral Assets). The assets included in the redemption proceeds will be valued in the same manner and on the same basis as the Trust's NAV calculations for its assets generally. In connection with a redemption order, the redeeming authorized participant authorizes the Trustee to deduct from the proceeds of redemption any and all transaction fees associated with redemptions. Shares can be surrendered for redemption only in Baskets.

The Trust will meet the initial and continued listing requirements applicable to TIRs in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. With respect to application of Rule 10A–3 [23] under the Act, the Trust relies on the exception contained in Rule 10A–3(c)(7).[24] A minimum of 100,000 Shares of the Trust will be outstanding as of the start of trading on the Exchange.

A more detailed description of the Shares, the Trust, the Index and the Index Futures, as well as investment risks, creation and redemption procedures and fees is set forth in the Registration Statement.

Availability of Information Regarding the Shares

The NAV for the Shares will be disseminated to all market participants at the same time. The Exchange will also make available on its Web site daily trading volume of the Shares and the closing prices of such Shares.

The intraday, closing prices and settlement prices of the Index Futures and the futures contracts included in the Index, DJ–UBS Roll Select CI and DJ–UBS CI are or will be readily available from the Web sites of the relevant futures exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The relevant futures exchanges also provide delayed futures information on current and past trading sessions and market news free of charge on their respective Web sites. The specific contract specifications for the Index Futures and for the underlying futures contracts in the Index, DJ–UBS Roll Select CI and DJ–UBS CI are also available on such Web sites, as well as other financial informational sources. Information regarding the Collateral Assets will be available from applicable exchanges and market data vendors. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line.

The Sponsor's Web site, *http://www.ishares.com*, and/or the Exchange's Web site, which are publicly accessible at no charge, will contain the following information: (a) The current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the midpoint of the bid-ask price in relation to the NAV as of the time the NAV is calculated (the ''Bid-Ask Price'') [25]; and (c) the prospectus. The Trust will also disseminate Trust holdings on a daily basis on the Trust's Web site.

The Trust will provide Web site disclosure of portfolio holdings daily and will include, as applicable, (i) the composite value of the total portfolio, (ii) the name, quantity, price and market value of each Index Future and Collateral Asset, and the characteristics of such Index Futures and Collateral Assets, and (iii) the amount of cash held in the portfolio of the Trust.

participant must deliver in exchange for one Basket, or that an authorized participant is entitled to receive in exchange for each Basket surrendered for redemption.

[23] 17 CFR 240.10A–3.

[24] 17 CFR 240.10A–3(c)(7).

[25] The Bid/Ask Price will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the NAV. The records relating to Bid/Ask Prices will be retained by the Trust and its service providers.

This Web site disclosure of the portfolio composition of the Trust will occur at the same time as the disclosure by the Sponsor of the portfolio composition to authorized participants so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public Web site as well as in electronic files provided to authorized participants. Accordingly, each investor will have access to the current portfolio composition of the Trust through the Trust's Web site.

The Index Co-Sponsors will calculate and publish the value of the Index, the DJ–UBS Roll Select CI and DJ–UBS CI continuously on each business day, with such values updated at least every 15 seconds during the Core Trading Session (from 9:30 a.m. to 4:00 p.m. E.T.) and disseminated by S&P Dow Jones Indices to market data vendors. The contents and percentage weighting of the Index, the DJ–UBS Roll Select CI and DJ–UBS CI, will be available at the Index Co-Sponsors' Web site, *www.djindexes.com*, and distributed to third-party data providers.

The intra-day indicative value (''IIV'') per Share of the Trust will be based on the prior day's final NAV per Share, adjusted every 15 seconds during the Core Trading Session to reflect the continuous price changes of the Trust's Index Futures and other holdings. The IIV per Share will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[26]

The Trustee will determine the net asset value of the Trust and the NAV as of 4:00 p.m. E.T., on each Business Day [27] on which the Exchange is open for regular trading, or as soon as practicable after that time.

Suitability

Currently, NYSE Arca Equities Rule 9.2(a) (Diligence as to Accounts) provides that an Equity Trading Permit (''ETP'') Holder, before recommending a transaction in any security, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to its other security holdings and as to its financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder must make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that such ETP Holder believes would be useful to make a recommendation.

Prior to the commencement of trading, the Exchange will inform its ETP Holders of the suitability requirements of NYSE Arca Equities Rule 9.2(a) in an Information Bulletin (''Bulletin''). Specifically, ETP Holders will be reminded in the Bulletin that, in recommending transactions in these securities, they must have a reasonable basis to believe that (1) The recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares. In connection with the suitability obligation, the Bulletin will also provide that members must make reasonable efforts to obtain the following information: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

FINRA has issued a regulatory notice providing guidance to firms about the supervision of complex products, as described in FINRA Regulatory Notice 12–03 (January 2012) (''FINRA Regulatory Notice''). While the FINRA Regulatory Notice does not provide a definition of what constitutes a ''complex product,'' it does identify characteristics that may make a product ''complex'' for purposes of determining whether the product should be subject to heightened supervisory and compliance procedures.[28] The Fund's characteristics may raise issues similar to those raised in the FINRA Regulatory Notice. Therefore, the Bulletin will state that ETP Holders that carry customer accounts should follow the FINRA Regulatory Notice with respect to suitability.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00, for which the MPV for order entry is $0.0001.

The trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on ETP Holders acting as registered Market Makers in TIRs to facilitate surveillance. See ''Surveillance'' below for more information.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the Index Futures, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule [29] or by the halt or suspension of trading of the underlying futures contracts.

The Exchange may halt trading during the day in which an interruption to the dissemination of the IIV, the Index value or the value of the Index Futures occurs. If the interruption to the dissemination of the IIV, the Index value or the value of the Index Futures persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the

[26] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs published on CTA or other data feeds. In addition, although not likely, circumstances may arise in which the NYSE Arca Core Trading Session is in progress, but trading in Index Futures is not occurring. Such circumstances may result from reasons including, but not limited to, the applicable Futures Exchange having a separate holiday schedule than the NYSE Arca or closing prior to the close of the NYSE Arca, price fluctuation limits being reached in an Index Future, or the applicable Futures Exchange imposing any other suspension or limitation on trading in an Index Future. In such instances, the value of the applicable Index Futures held by the Fund would be static or priced by the Fund at the applicable early cut-off time of the Futures Exchange trading the applicable Index Future. Moreover, any cash held by the Fund for collateralization purposes will be invested in Collateral Assets that do not have market exposure, such that their value would not change throughout the trading day. As such, during such periods, the disseminated IIV for the Fund will be static.

[27] *See* note 20, *supra*.

[28] *See* FINRA Regulatory Notice, at 3–4.

[29] *See* NYSE Arca Equities Rule 7.12.

trading day following an interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[30] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets that are members of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement.[31] The CME, CBOT, NYMEX and ICE Futures U.S. are members of ISG, and the Exchange may obtain market surveillance information with respect to transactions occurring on the COMEX pursuant to the ISG memberships of CME and NYMEX. In addition, the Exchange has entered into a comprehensive surveillance sharing agreement with the LME that applies with respect to trading in futures contracts currently included in the DJ–UBS CI and DJ–UBS Roll Select CI.

In addition, with respect to Index Futures traded on exchanges, not more than 10% of the weight of such Index Futures in the aggregate shall consist of futures contracts whose principal trading market (a) is not a member of ISG or (b) is a market with which the Exchange does not have a comprehensive surveillance sharing agreement, provided that, so long as the Exchange may obtain market surveillance information with respect to transactions occurring on the COMEX pursuant to the ISG memberships of CME and NYMEX, futures contracts whose principal trading market is COMEX shall not be subject to the prohibition in (a), above.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares in Baskets (and that Shares are not individually redeemable); (3) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (4) how information regarding the IIV is disseminated; (5) that a static IIV may be disseminated, between the close of trading on the applicable futures exchange and the close of the NYSE Arca Core Trading Session;[32] (6) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (7) trading information.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Shares directly from the Trust will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors. The Information Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference that the CFTC has regulatory jurisdiction over Index Futures traded on U.S. markets.

The Information Bulletin will also disclose the trading hours of the Shares of the Trust and that the NAV for the Shares will be calculated after 4:00 p.m. E.T. each trading day. The Bulletin will disclose that information about the Shares of the Funds is publicly available on the Trust's Web site.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[33] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. The Trust seeks to achieve its investment objective by investing in Index Futures and Collateral Assets posted as margin and held to collateralize the Trust's Index Futures positions. The Sponsor represents that the Trust will invest in Index Futures and Collateral Assets, in a manner consistent with the Trust's investment objective and not to achieve additional leverage. With respect to Index Futures traded on exchanges, not more than 10% of the weight of such Index Futures in the aggregate shall consist of futures contracts whose principal trading market (a) is not a member of ISG or (b) is a market with which the Exchange does not have a comprehensive surveillance sharing agreement, provided that, so long as the Exchange may obtain market surveillance information with respect to transactions occurring on the COMEX pursuant to the ISG memberships of CME and NYMEX, futures contracts whose principal trading market is COMEX shall not be subject to the prohibition in (a), above. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities

[30] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

[31] For a list of the current members of ISG, see *www.isgportal.org*. The Exchange notes that not all components of the portfolio for the Shares may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[32] *See* note 26, *supra*.

[33] 15 U.S.C. 78f(b)(5).

laws. Prior to the commencement of trading, the Exchange will inform its ETP Holders of the suitability requirements of NYSE Arca Equities Rule 9.2(a) in a Bulletin. The Bulletin will state that ETP Holders that carry customer accounts should follow the FINRA Regulatory Notice with respect to suitability. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Adviser is not a broker-dealer but is affiliated with a broker-dealer and has implemented a firewall with respect to such broker-dealer affiliate as well as procedures designed to prevent the use and dissemination of material non-public information regarding the assets of the Trust. UBS Securities has implemented a fire wall with respect to its personnel regarding access to information concerning the composition and/or changes to the Index, DJ–UBS CI and DJ–UBS Roll Select CI and the calculation of the values of the foregoing indexes, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Index, DJ–UBS CI and DJ–UBS Roll Select CI. The Index Co-Sponsors have implemented and maintain procedures designed to prevent the use and dissemination of material non-public information regarding the DJ–UBS Roll Select CI, the DJ–UBS CI and the Index. The Supervisory Committee and the Advisory Committee are subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Index, DJ–UBS Roll Select CI and DJ–UBS CI.

Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the Index Futures, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule or by the halt or suspension of trading of the Designated Contracts. The Exchange represents that the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV, the Index value or the value of the Index Futures occurs. If the interruption to the dissemination of the IIV, the Index value or the value of the Index Futures persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following an interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that a large amount of information is publicly available regarding the Trust and the Shares, thereby promoting market transparency. The NAV for the Shares will be disseminated to all market participants at the same time. The IIV per Share will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. Trading in Shares of the Trust will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. The Trust will provide Web site disclosure of portfolio holdings daily and will include, as applicable, (i) the composite value of the total portfolio, (ii) the name, quantity, price and market value of each Index Future and Collateral Asset, and the characteristics of such Index Futures and Collateral Assets, and (iii) the amount of cash held in the portfolio of the Trust. The value of the Index, DJ–UBS Roll Select CI and DJ–UBS CI will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. The intraday, closing prices and settlement prices of the Index Futures and the futures contracts included in the Index, DJ–UBS Roll Select CI and DJ–UBS CI are or will be readily available from the Web sites of the relevant futures exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The contents and percentage weighting of the Index, the DJ–UBS Roll Select CI and DJ–UBS CI, will be available at the Index Co-Sponsors' Web site, *www.djindexes.com,* and distributed to third-party data providers. The Exchange will also make available on its Web site daily trading volume of each of the Shares and the closing prices of such Shares. The prices of the Index Futures and Collateral Assets will be available from the applicable exchanges and market data vendors.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Trust's holdings, IIV, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2013–48 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–NYSEArca–2013–48. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing 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–NYSEArca–2013–48 and should be submitted on or before June 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–11897 Filed 5–17–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69570; File No. SR–C2–2013–020]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

May 14, 2013.

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 May 01, 2013, 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 proposes to amend its Fees Schedule. First, the Exchange proposes to make changes to its fees for orders in all multiply-listed index and ETF options classes. Currently, the Exchange offers a rebate for Public Customer complex orders, including those that trade against simple (non-complex) orders (excluding trades on the open, for which no fees are assessed or rebates given). However, the Exchange also offers a rebate for all Maker simple orders (excluding trades on the open, for which no fees are assessed or rebates given). Therefore, in circumstances when a Public Customer complex order trades against a simple Maker order, the Exchange pays a rebate to both market participants and takes in no fees. The Exchange has determined that this is not economically viable. Therefore, the Exchange proposes to add a note that applies to the listing of all Maker rebates in Section 1A of the Fees Schedule (which discusses fees for simple, non-complex orders in all multiply-listed index and ETF options classes) that states ''Rebates do not apply to orders that trade with Public Customer complex orders. In such a circumstance, there will be no fee or rebate.'' The Exchange also proposes to amend the note that already applies to the listing of all Public Customer rebates in Section 1D [sic][3] of the Fees Schedule (which discusses fees for complex orders in all multiply-listed index and ETF options classes). This note currently states that the rebate for Public Customer complex orders does not apply to Public Customer orders that trade with other Public Customer orders. In such a circumstance, there will be no Maker or Taker fee or rebate. The Exchange proposes to amend this note to state that the rebate (for Public Customer complex orders) will only apply to Public Customer complex orders that trade with non-Public Customer complex orders. In other circumstances, there will be no Maker or Taker fee or rebate. This simple language achieves the goal of excepting out Public Customer complex orders that trade with simple orders from receiving the rebate (as well as excepting out Public Customer complex orders that trade with other Public Customer complex orders, which were already excepted out of receiving the

[34] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the proposed change modifies section 1C of the Fees Schedule, not 1D.

rebate), and states that such orders will be assessed no fee or rebate.

The Exchange also proposes to amend fees for simple, non-complex orders in equity options classes. The maximum fees for such orders are $0.85 ($0.085 mini-options) and the maximum rebates for such orders are $0.75 ($0.075 for mini-options).[4] Feedback received from C2 market participants has made it clear to the Exchange that in the BAC, MBI, BBRY, DELL and JCP equity options classes (the ''Unique Classes''), the economics of a fee/rebate structure that has a maximum fee of $0.85 per contract and a maximum rebate of $0.75 per contract is disproportionate to pricing and does not encourage trading. As such, the Exchange proposes to amend its Fees Schedule to state that the maximum fee for the Unique Classes will be $0.55 per contract and the maximum rebate for the Unique Classes will be $0.45 per contract (mini-options are not traded on the Unique Classes). This maintains the $0.10 difference between the maximum fee and rebate (as currently exists).

The Exchange also proposes to amend its Fees Schedule to make a number of technical changes. First, the Exchange proposes to remove all references in the Fees Schedule to SPXPM, a product which is no longer traded on C2. Therefore, Section 1E of the current Fees Schedule, which listed the rates for SPXPM executions, is no longer relevant, and therefore the Exchange proposes to delete it. Section 1F—Index License Surcharge Fees—can also be deleted, as the only Index License Surcharge Fee listed was that for SPXPM. References to the SPXPM Tier Appointment Fee in Section 3 will also be deleted.

The Exchange also proposes to delete references to past dates from its Fees Schedule. Section 1B describes how fees for simple, non-complex orders in equity options classes will be calculated, effective February 1, 2013. Since that date has passed, the Exchange proposes to delete such reference. Similarly, Section 8E lists the Options Regulatory Fee (''ORF'') as being $.0015 per contract through December 31, 2012 and $.002 per contract effective January 2, 2013. As January 2, 2013 has passed, the Exchange proposes to delete the reference to the previous fee and merely state that the ORF will be $.002 per contract.

Finally, the Exchange proposes to clearly state that the fees in Sections 1A and 1C that apply to multiply-listed index and ETF options classes also apply to multiply-listed ETN options classes. This was not previously explicitly-stated on the Fees Schedule.

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.[5] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[6] which requires that Exchange rules 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 changes to the rebates offered for multiply-listed index and ETF options are reasonable because, while in the circumstances discussed, market participants will no longer be receiving a rebate, they still will not be paying a fee for such transactions. Further, it is not economically viable for the Exchange to be paying out rebates in transactions in which the Exchange does not collect a fee (especially to be paying out rebates on both sides of such transactions). This change is equitable and not unfairly discriminatory because it will apply to all market participants who had previously been receiving rebates for such transactions, and they will all now simply not be assessed a fee (or provided a rebate) in those circumstances.

The Exchange believes that the proposed change to the maximum fee and rebate amounts for the Unique Classes is reasonable because the maximum amounts of both fees and rebates will be lower than it currently is. Further, the maximum fee amount is reasonable because, among other things, the fee will not always be assessed for the maximum amount. The fee will only be for the maximum amount when the BBO Market Width is wide. Otherwise, the fee will be smaller. Indeed, the purpose of the fees structure is to encourage tighter quoting by linking lower fees to such tighter quoting. It is necessary to maintain a spread between the maximum fee and the maximum rebate because, in the event that the maximum fee and rebate both apply, the $0.10 per-contract difference will allow the Exchange to maintain a minimum level of profit potential. Rebate amounts are often generally lower than fee amounts on the Exchange, as well as on other exchanges,[7] for this reason (among others). The Exchange believes that it is equitable and not unfairly discriminatory to offer different maximum fees and rebates for simple, non-complex orders in the Unique Classes than for other equity options classes because the economics of the Unique Classes are such that the proposed maximum fee and rebates for the Unique Classes are more relevant and will encourage greater trading in those classes. Further, the spread between the maximum fee and rebate for the Unique Classes and for other equity options classes will be the same ($0.10 per contract). Finally, the proposed maximum fee and rebate amounts for the Unique Classes apply to all market participants in the same manner that the current maximum fee and rebate amounts do.

The Exchange believes that making changes to remove references to SPXPM and past dates, and to add the references to ETN options, is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Removing obsolete and irrelevant references and sections from the Fees Schedule and improving the references to ETN options prevents possible investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed changes to the rebates offered for multiply-listed index and ETF options will impose any unnecessary or inappropriate burden on intramarket competition because the changes will apply to all market participants who had previously been receiving rebates for such transactions, and they will all now simply not be assessed a fee (or provided a rebate) in

[4] All fee amounts referenced are per-contract.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] *See* current C2 Fees Schedule, Section 1, *and* NOM Chapter XV (Options Pricing), Section 2.

[8] 15 U.S.C. 78f(b)(5).

those circumstances. The Exchange does not believe that the proposed changes to the maximum fee and rebate amounts for the Unique Classes will impose any unnecessary or inappropriate burden on intramarket competition because they will apply to all market participants in the same manner that the current maximum fee and rebate amounts do. The Exchange does not believe that the proposed changes will impose any unnecessary or inappropriate burden on intermarket competition because they apply only to trading on C2, and because these changes lower rebates that had previously been provided. To the extent that these changes make C2 a more attractive trading venue for market participants on other exchanges, such market participants may always elect to become market participants at C2.

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) of the Act [9] and paragraph (f) of Rule 19b–4 [10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–C2–2013–020 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–C2–2013–020. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2013–020, and should be submitted on or before June 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–11899 Filed 5–17–13; 8:45 am]

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69574; File No. SR–CBOE–2013–047]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fees Schedule

May 14, 2013.

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 May 1, 2013, 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 ament [sic] 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 proposes to amend Footnote 24 of its Fees Schedule.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Specifically, the Exchange would like to add to Footnote 24 the statement that, if a Market-Maker or its affiliate (''affiliate'' defined as having at least 75% common ownership between the two entities as reflected on each entity's Form BD, Schedule A) receives a credit under the Exchange's Volume Incentive Program (''VIP''), that Market-Maker will receive a credit on its Market-Maker Trading Permit fees corresponding to the VIP tier reached (10% Market-Maker Trading Permit fee credit for reaching Tier 2 of the VIP, 20% Market-Maker Trading Permit fee credit for reaching Tier 3 of the VIP, and 30% Market-Maker Trading Permit fee credit for reaching Tier 4 of the VIP). This credit will not apply to Market-Maker Trading Permits used for appointments in SPX, SPXpm, VIX, OEX and XEO.

For example, consider a Market-Maker holds 23 Market-Maker Trading Permits (excluding those used with appointments in SPX, SPXpm, VIX, OEX and XEO) and has an affiliate that electronically transacts 2.50% of the national customer volume in multiply-listed options classes over the course of a month (putting that affiliate at Tier 3 on the VIP). Currently, that Market-Maker would be assessed a fee of $102,500 for that month for the Market-Maker's 23 Market-Maker Trading Permits ($5,500 for each of the first ten permits, $4,000 for each of the next ten permits, and $2,500 for the final three permits).[3] However, under the proposed change, the Market-Maker would receive a 20% credit ($20,500) on its Market-Maker Trading Permit fees (because its affiliate reached Tier 3 of the VIP), and therefore would only be assessed a fee of $82,000 for the 23 Market-Maker Trading Permits ($102,500–$20,500).

The purpose of the proposed change is to incentivize the sending of orders to CBOE by firms that have both Market-Maker and order-router arms. In the options industry, many options orders are routed by consolidators, which are firms that have both order router and Market-Maker arms. CBOE wants to be aware not only of the importance of providing credits on the order side in order to encourage the sending of orders to CBOE but also costs of operation on Market-Maker side. The Exchange has determined to address both sides by providing relief both on the order flow side (via the credits provided in the VIP) and the Market-Maker side (with the credits proposed herein). The resulting increased volume should benefit all CBOE market participants. Further, other options exchanges also provide credits to Market-Makers if a Market-Maker's affiliate's adds a certain amount of customer liquidity to that exchange.[4] The Exchange proposes to exclude Market-Maker Trading Permits used for appointments in SPX, SPXpm, VIX, OEX and XEO from this credit because such permits are excluded from the Market-Maker Trading Permit Sliding Scale, and because the Exchange expended considerable resources developing those products and therefore desires not to give a credit related to those products in order to recoup those expenditures.

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.[5] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[6] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The Exchange believes that the proposed change is reasonable because it will allow qualifying Market-Makers to receive a credit on their Market-Maker Trading Permit fees. The Exchange believes that this proposed change is equitable and not unfairly discriminatory because Market-Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. Market-Makers have a number of obligations, including quoting obligations, that other market participants do not have. The purpose of the proposed change is to incentivize the sending of orders to CBOE by firms that have both Market-Maker and order-router arms. In the options industry, many options orders are routed by consolidators, which are firms that have both order router and Market-Maker arms. CBOE wants to be aware not only of the importance of providing credits on the order side in order to encourage the sending of orders to CBOE but also costs of operation on Market-Maker side. The Exchange has determined to address both sides by providing relief both on the order flow side (via the credits provided in the VIP) and the Market-Maker side (with the credits proposed herein). By incentivizing a Market-Maker or its affiliate to achieve higher tiers on the VIP, the Exchange seeks to add greater Customer liquidity, and the resulting increased volume benefits all market participants (including Market-Makers or affiliates who do not achieve the higher tiers on the VIP; indeed, this increased volume may allow them to reach these tiers). This increased volume will also assist other Trading Permit Holders in achieving higher tiers on the VIP, including those that do not have affiliated Market-Makers. Further, other options exchanges also provide credits to Market-Makers if a Market-Maker's affiliate's adds a certain amount of customer liquidity to that exchange.[7] Finally, the proposed credit is available to all Market-Makers who qualify. The Exchange believes that it is equitable and not unfairly discriminatory to exclude Market-Maker Trading Permits used for appointments in SPX, SPXpm, VIX, OEX and XEO from this credit because such permits are excluded from the Market-Maker Trading Permit Sliding Scale, and because the Exchange expended considerable resources developing those products and therefore desires not to give a credit related to those products in order to recoup those expenditures.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change will impose an unnecessary or inappropriate burden on intramarket competition because Market-Makers are valuable market participants that provide liquidity in the marketplace and incur costs that other market participants do not incur. Market-Makers have a number of obligations, including quoting obligations, that other market participants do not have. By incentivizing a Market-Maker or its affiliate to achieve higher tiers on the VIP, the Exchange seeks to add greater Customer liquidity, and the resulting

[3] *See* CBOE Fees Schedule, Market-Maker Trading Permit Sliding Scale table.

[4] *See* The NASDAQ Stock Market, LLC Options Market (''NOM'') Options Pricing, specifically Tier 3 of the table describing The NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options. Under Tier 3, a NOM Market Maker receives a credit if that Market Maker and its affiliate under Common Ownership qualify for Tier 8 of NOM's Customer and Professional Rebate to Add Liquidity in Penny Pilot Options. *See also* NYSE Arca, Inc. (''Arca'') Fees and Charges, specifically the table describing the Market Maker Monthly Posting Credit Super Tier, under which transaction volume from a Market Maker's affiliates count towards the Market Maker's ability to qualify for higher credit tiers.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] *See* Footnote 4.

increased volume benefits all market participants (including Market-Makers or affiliates who do not achieve the higher tiers on the VIP; indeed, this increased volume may allow them to reach these tiers). This increased volume will also assist other Trading Permit Holders in achieving higher tiers on the VIP, including those that do not have affiliated Market-Makers. The Exchange does not believe that the proposed change will impose an unnecessary or inappropriate burden on intermarket competition because it only applies to CBOE. To the extent that this rebate, or the resulting increased volume, proves attractive to market participants on other options exchanges, such market participants may elect to become market participants at CBOE.

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) of the Act [8] and paragraph (f) of Rule 19b–4 [9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2013–047 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–2013–047.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–047 and should be submitted on or before June 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–11898 Filed 5–17–13; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13579 and #13580]

Illinois Disaster #IL–00041

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–4116–DR), dated 05/10/2013.

Incident: Severe Storms, Straight-line Winds and Flooding.

Incident Period: 04/16/2013 through 05/05/2013.

Effective Date: 05/10/2013.

Physical Loan Application Deadline Date: 07/09/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 02/10/2014.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/10/2013, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Cook, Dekalb, Dupage, Fulton, Grundy, Kane, Kendall, La Salle, Lake, McHenry, Will.

Contiguous Counties (Economic Injury Loans Only): Illinois:

Boone, Bureau, Kankakee, Knox, Lee, Livingston, Marshall, Mason, McDonough, Ogle, Peoria, Putnam, Schuyler, Tazewell, Warren, Winnebago, Woodford.

Indiana: Lake.

Wisconsin: Kenosha, Walworth.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.375
Homeowners Without Credit Available Elsewhere	1.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.875
Non-Profit Organizations Without Credit Available Elsewhere	2.875
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

	Percent
Non-Profit Organizations Without Credit Available Elsewhere	2.875

The number assigned to this disaster for physical damage is 135796 and for economic injury is 135800.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2013–11829 Filed 5–17–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13581 and #13582]

South Dakota Disaster #SD–00057

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Dakota (FEMA–4115–DR), dated 05/10/2013.

Incident: Severe Winter Storm and Snowstorm.

Incident Period: 04/08/2013 through 04/10/2013.

Effective Date: 05/10/2013.

Physical Loan Application Deadline Date: 07/09/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 02/10/2014.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/10/2013, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Douglas, Hutchinson, Lincoln, Mccook, Minnehaha, Shannon, Turner, and the Pine Ridge Reservation located within Shannon County.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	2.875
Non-Profit Organizations Without Credit Available Elsewhere	2.875
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.875

The number assigned to this disaster for physical damage is 13581B and for economic injury is 13582B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2013–11830 Filed 5–17–13; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Passenger Facility Charge (PFC) Application

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. This program requires public agencies and certain members of the aviation industry to prepare and submit applications and reports to the FAA. Through this program the FAA provides additional funding for airport development which is needed now and in the future.

DATES: Written comments should be submitted by July 19, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0557.

Title: Passenger Facility Charge (PFC) Application.

Form Numbers: FAA Form 5500–1.

Type of Review: Renewal of an information collection.

Background: 49 U.S.C. 40117 authorizes airports to impose passenger facility charges (PFC). The final rule (14 CFR part 158) implementing this Act was effective June 28, 1991. The information collected allows the FAA to approve the collection of PFC revenue for projects which preserve or enhance safety, security, or capacity of the national air transportation system, or which reduce noise or mitigate noise impacts resulting from an airport, or which furnish opportunities for enhanced competition between or among air carriers.

Respondents: Approximately 450 applicants annually.

Frequency: Information is collected quarterly.

Estimated Average Burden per Response: 10 hours.

Estimated Total Annual Burden: 24,025 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on May 15, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–11959 Filed 5–17–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Human Space Flight Requirements for Crew and Space Flight Participants

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The FAA uses the information collected related to public safety to ensure that a launch or reentry operation involving a human on board a vehicle will meet the risk criteria and requirements with regard to ensuring public safety.

DATES: Written comments should be submitted by July 19, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0720.

Title: Human Space Flight Requirements for Crew and Space Flight Participants.

Form Numbers: There are no FAA forms associated with this information collection.

Type of Review: Renewal of an information collection.

Background: The FAA has established requirements for human space flight of crew and space flight participants as required by the Commercial Space Launch Amendments Act of 2004. The information collected is used by the FAA, a licensee or permittee, a space flight participant, or a crew member. The FAA uses the information related to public safety to ensure that a launch or reentry operation involving a human on board a vehicle will meet the risk criteria and requirements with regard to ensuring public safety.

Respondents: Approximately 5 applicants annually.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 4 hours.

Estimated Total Annual Burden: 2,975 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on May 15, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–11964 Filed 5–17–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information collected is needed for applicants' noise certification compliance reports in order to demonstrate compliance with 14 CFR Part 36.

DATES: Written comments should be submitted by July 19, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0659.

Title: Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes.

Form Numbers: There are no FAA forms associated with this collection of information.

Type of Review: Renewal of an information collection.

Background: The information collected is needed for applicants' noise certification compliance reports in order to demonstrate compliance with 14 CFR Part 36, which is implemented under the Aircraft Noise Abatement Act of 1968. An applicant's collected information is incorporated into a noise compliance report that is provided to and approved by the FAA. The noise compliance report is used by the FAA in making a finding that the airplane is in compliance with regulations.

Respondents: Approximately 10 applicants annually.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 135 hours.

Estimated Total Annual Burden: 1,350 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on May 15, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–11962 Filed 5–17–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Representatives of the Administrator

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection of information is for the purpose of obtaining essential information concerning the applicant's professional and personal qualifications. The FAA uses the information provided to screen and select designees who act as representatives of the FAA Administrator in performing various

certification and examination functions under Title VI of Federal Aviation Act.

DATES: Written comments should be submitted by July 19, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0033.

Title: Representatives of the Administrator.

Form Numbers: FAA forms 8110–14, 8110–28, 8710–6, 8710–10.

Type of Review: Renewal of an information collection.

Background: Title 49, United States Code, Section 44702 authorizes the appointment of appropriately qualified persons to be representatives of the Administrator to allow those persons to examine, test and certify other persons for the purpose of issuing them pilot and instructor certificates. The collection of information is for the purpose of obtaining essential information concerning the applicant's professional and personal qualifications. The FAA uses the information provided to screen and select designees who act as representatives of the FAA Administrator in performing various certification and examination functions under Title VI of Federal Aviation Act.

Respondents: Approximately 5,015 applicants annually.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1.5 hours.

Estimated Total Annual Burden: 7,098 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on May 15, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–11991 Filed 5–17–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Aviation Medical Examiner Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. This collection is necessary in order to determine applicants' qualifications for certification as Aviation Medical Examiners (AMEs).

DATES: Written comments should be submitted by July 19, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0604.

Title: Aviation Medical Examiner Program.

Form Numbers: FAA Form 8520–2.

Type of Review: Renewal of an information collection.

Background: 14 CFR Part 183 describes the requirements for delegating to private physicians the authority to conduct physical examinations on persons wishing to apply for their airmen medical certificate. This collection of information is for the purpose of obtaining essential information concerning the applicants' professional and personal qualifications. The FAA uses the information to screen and select the designees who serve as aviation medical examiners.

Respondents: Approximately 450 applicants annually.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 30 minutes.

Estimated Total Annual Burden: 225 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on May 15, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–11960 Filed 5–17–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Anti-Drug Program for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Information is collected to determine program compliance or non-compliance of regulated aviation employers, oversight planning, to determine who must provide annual Management Information System testing information, and to communicate with entities subject to the program regulations.

DATES: Written comments should be submitted by July 19, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0535.

Title: Anti-Drug Program for Personnel Engaged in Specified Aviation Activities.

Form Numbers: There are no FAA forms associated with this collection of information.

Type of Review: Renewal of an information collection.

Background: The FAA mandates specified aviation entities to conduct drug and alcohol testing under its regulations, Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities (14 CFR Part 121, appendices I and J), 49 U.S.C. 31306 (Alcohol and controlled substances testing), and the Omnibus Transportation Employee Testing Act of 1991 (the Act). The FAA uses information collected for determining program compliance or non-compliance of regulated aviation employers, oversight planning, determining who must provide annual MIS testing information, and communicating with entities subject to the program regulations. In addition, the information is used to ensure that appropriate action is taken in regard to crew members and other safety-sensitive employees who have tested positive for drugs or alcohol, or have refused to submit to testing.

Respondents: Approximately 7,000 affected entities annually.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 5 minutes.

Estimated Total Annual Burden: 22,902 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued In Washington, DC, on May 15, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–11958 Filed 5–17–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Office of Commercial Space Transportation; Notice of Availability of a Record of Decision (ROD) To Issue a Reentry License to Lockheed Martin Corporation for the Reentry of the Orion Multi-Purpose Crew Vehicle (MPCV) From Earth Orbit to a Location in the Pacific Ocean

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of the ROD.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA; 42 United States Code 4321 et seq.), Council on Environmental Quality NEPA implementing regulations (40 Code of Federal Regulations parts 1500 to 1508), and FAA Order 1050.1E, Change 1, *Environmental Impacts: Policies and Procedures,* the FAA is announcing the availability of the ROD to issue a reentry license to Lockheed Martin Corporation for the reentry of the Orion MPCV from Earth orbit to a location in the Pacific Ocean.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Czelusniak, Environmental Specialist, Office of Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Room 325, Washington, DC 20591; email *Daniel.Czelusniak@faa.gov*; or phone (202) 267–5924.

SUPPLEMENTARY INFORMATION: The potential environmental consequences of the Orion MPCV reentering the Earth's atmosphere and landing in the Pacific Ocean were analyzed in the 2008 *Final Constellation Programmatic Environmental Impact Statement* (2008 PEIS) prepared by the National Aeronautics and Space Administration. Because the FAA was not a cooperating agency on the 2008 PEIS, the FAA adopted in part the 2008 PEIS and recirculated it as a Final EIS in accordance with 40 CFR 1506.3(b). A public notice of FAA's adoption and recirculation of the 2008 PEIS was published in the **Federal Register** on November 30, 2012.

The ROD provides a description of the Proposed Action and the No Action Alternative. It includes a discussion of the potential environmental impacts associated with the Proposed Action for each applicable resource area, as analyzed in the 2008 PEIS. The 2008 PEIS serves as the primary reference and basis for preparation of the ROD. The 2008 PEIS documents the analysis of the potential environmental consequences associated with the above referenced Proposed Action and a No Action Alternative, and is made part of the ROD. The FAA adopted the 2008 PEIS in part pursuant to the requirements of NEPA, CEQ Regulations, and FAA Order 1050.1E, Change 1. Furthermore, the ROD represents the FAA's final environmental determination and approval to support the issuance reentry license to Lockheed Martin Corporation for the reentry of the Orion MPCV from Earth orbit to a location in the Pacific Ocean.

The FAA has posted the ROD on the FAA Web site at *http://www.faa.gov/about/office_org/headquarters_offices/ast/environmental/nepa_docs/review/documents_completed/.*

Issued in Washington, DC, on: May 9, 2013.

Daniel P. Murray,

Acting Manager, Space Transportation Development Division.

[FR Doc. 2013–11929 Filed 5–17–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Availability of Noise Compatibility Program for Chicago Midway International Airport, Chicago, Illinois

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA announces its determination that the noise exposure maps submitted by the City of Chicago Department of Aviation for Chicago Midway International Airport under the provisions of 49 U.S.C. 47501 et. seq (formerly the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 CFR Part 150 (hereinafter referred to as ''Part 150'') are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Chicago Midway International Airport under Part 150 in

conjunction with the noise exposure map, and that this program will be approved or disapproved on or before November 18, 2013.

DATES: This notice is effective May 20, 2013, and is applicable April 22, 2013. The public comment period ends June 19, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Hanson, Environmental Protection Specialist, CHI–603, Federal Aviation Administration, Chicago Airport District Office, 2300 East Devon Avenue, Des Plaines, IL 60018. Telephone number: 847–294–7354. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Chicago Midway International Airport are in compliance with applicable requirements of Part 150, effective May 20, 2013. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before November 18, 2013. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C., section 47503 (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

City of Chicago Department of Aviation submitted to the FAA on April 22, 2013 noise exposure maps, descriptions and other documentation that were produced during noise compatibility planning study conducted from 2011 through 2013. It was requested that the FAA review this material as the noise exposure maps, as described in section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by City of Chicago Department of Aviation. The specific documentation determined to constitute the noise exposure maps includes: Exhibit 3–1, Exhibit 3–2, and Chapter 3 of the Part 150 study document. The FAA has determined that these maps for Chicago Midway International Airport are in compliance with applicable requirements. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix D of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Preliminary review of the submitted noise compatibility program for Chicago Midway International Airport indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before November 18, 2013. A public hearing was held on March 21, 2013 at The Mayfield, 6072 S. Archer Avenue, Chicago, Illinois.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses. Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Chicago Airport District Office, 2300 East Devon Avenue, Des Plaines, IL 60018.

CDA Environment Division, Chicago O'Hare International Airport, 10510 W. Zemke Road, Chicago, IL 60666.

Airport Maintenance Complex, Chicago Midway International Airport, 6201 S. Laramie Avenue, Chicago, IL 60638.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Des Plaines, IL.

Dated: May 13, 2013.

James G. Keefer,

Manager, Chicago Airports District Office .

[FR Doc. 2013–11931 Filed 5–17–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–22]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14, Code of Federal Regulations (14 CFR). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATE: Comments on this petition must identify the petition docket number and must be received on or before June 10, 2013.

ADDRESSES: You may send comments identified by docket number FAA–2013–0312 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments digitally.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility 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.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility 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: Andrea Copeland, (202) 267–8081, Office of Rulemaking (ARM–208), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 15, 2013.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2013–0312.
Petitioner: FedEx Express Avionics.
Section of 14 CFR Affected: § 121.359(k).
Description of Relief Sought: FedEx Express seeks an exemption to allow time for completion of certification of datalink recording for FedEx Express 757 aircraft in conjunction with FANS I/A+ implementation and, thus, the aforementioned FAR.

[FR Doc. 2013–11956 Filed 5–17–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2013–0024]

Agency Information Collection Activities: Request for Comments for a New Information Collection.

AGENCY: Federal Highway Administration (FHWA), Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION.** We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by July 19, 2013.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2013–0024 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

Hand Delivery or Courier: 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: Crystal Jones, 202–366–2976, Office of Freight Management & Operations (HOFM–1), Office of Operations, Federal Highway Administration, 1200 New Jersey Ave., Room E84–313, Washington, DC 20509.. Office hours are from 8:30 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: USDOT Survey on Projects of National and Regional Significance (PNRS)

Background: US Department of Transportation (USDOT) is directed by Section 1120(1) of Moving Ahead for Progress in the 21st Century (MAP21), to prepare a report to Congress not later than 2 years after the date of enactment of the MAP–21. The USDOT is required to submit the report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate regarding PNRS. The purpose of the report is to identify projects of national and regional significance that: (a) Will significantly improve the performance of the Federal-aid highway system, nationally, (b) are able to generate national economic benefits that reasonably exceed the costs of the projects, including increased access to jobs, labor, and other critical economic inputs; (c) reduce long-term congestion, including impacts in the State, region, and the United States, and increase speed, reliability, and accessibility of the movement of people or freight; (d) improve transportation safety, including reducing transportation accidents, and serious injuries and fatalities; and (e) can be supported by an acceptable degree of non-Federal financial commitments.

The report is required to contain a comprehensive list of each project of national and regional significance that: (a) has been complied through a survey of State departments of transportation; and has been classified by the Secretary as a project of regional or national significance.

Respondents: The target groups of respondents are State Departments of Transportation, transit agencies, tribal governments and multi-state or multi-jurisdictional groups. The target groups identified in the legislation are ''State departments of transportation''; the Federal Highway Administration (FHWA) has interpreted the legislation to mean compile a list of projects from

all eligible applicants not just the State Departments of Transportation, thus in addition to State Departments of Transportation, FHWA will survey other eligible applicants which include tribal governments or consortium of tribal Governments, transit agencies and multi-State or multi-jurisdictional groups.

Estimate

State Departments of Transportation = 52

Transit Agencies = 50

Tribal Governments = 10

Multi-state or multi-jurisdictional groups = 10

Frequency: Every 2 years.

Estimated Average Burden per Response:

40 hours/State Department of Transportation = 2080 hours

20 hours/Transit Agency = 1000 hours

10 hours/Tribal Government = 100

20 hours/Multi-state or multi-jurisdictional groups = 200

Total burden hours = 3380.

Estimated Total Annual Burden: 3380 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection of information is necessary for the U.S. DOT's performance, including whether the information will have practical utility; (2) the accuracy of the U.S. DOT's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: May 14, 2013.

Michael Howell,

Information Collection Coordinator.

[FR Doc. 2013–11928 Filed 5–17–13; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0024]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 8 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective May 20, 2013. The exemptions expire on May 20, 2015.

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:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov*.

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 FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement 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 Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

Background

On March 19, 2013, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (78 FR 16912). That notice listed 8 applicants' case histories. The 8 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption 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. Accordingly, FMCSA has evaluated the 8 applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye and the ability to recognize the colors of traffic signals and devices showing requirement red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 8 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including enucleation, histoplasmosis, amblyopia, and refractive amblyopia. In most cases, their eye conditions were not recently developed. Six of the applicants were either born with their vision

impairments or have had them since childhood.

The two individuals that sustained their vision conditions as adults have had them for a period of 13 to 28 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 8 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 6 to 36 years. In the past 3 years, none of the drivers was involved in crashes but two were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the March 19, 2013, notice (78 FR 16912).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 8 applicants, none of the drivers was involved in crashes but two were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 8 applicants listed in the notice of March 19, 2013 (78 FR 16912).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 8 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be

physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received one comment in this proceeding. The comment is considered and discussed below.

An anonymous commenter suggested shortening routes for visually impaired drivers and including assistant drivers as passengers. The Agency acknowledges the commenters concern; however, we do not feel it is necessary to impose these restrictions.

Conclusion

Based upon its evaluation of the 8 exemption applications, FMCSA exempts Tom Campbell (PA), Joe Cunningham (IN), Dolan A. Gonzalez, Jr. (FL), Paul R. Harpin (AZ), Terry L. Lipscomb (AL), Donald G. Reed (IL), Randy T. Richardson (KS), and James E. Smith (IL) from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: May 10, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–11922 Filed 5–17–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8801

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8801, Credit For Prior Year Minimum Tax—Individuals, Estates and Trusts.

DATES: Written comments should be received on or before July 19, 2013.

ADDRESSES: Direct all written comments to, R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to, Katherine Dean (202) 622–3186, Internal Revenue Service, Room 6242, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Katherine.b.dean@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Credit For Prior Year Minimum Tax—Individuals, Estates and Trusts.

OMB Number: 1545–1073.

Form Number: 8801.

Abstract: Form 8801 is used by individuals, estates, and trusts to compute the minimum tax credit, if any, available from a tax year beginning after 1986 to be used in the current year or to be carried forward for use in a future year.

Current Actions: Lines 26 and 27 of Part II and all of Part IV have been deleted to reflect the expiration of the refundable portion of the credit per IRC 53(e); PL 109–432, sec 402(a). The title for Part II and the text of line 25 have also been revised. All references to the refundable portion of the minimum tax credit have been removed from the instructions.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 12,914.

Estimated Total Annual Burden Hours: 86,137.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 14, 2013.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2013–11836 Filed 5–17–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0099]

Proposed Information Collection (Dependent's Request for Change of Program or Place of Training) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of

1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to request a change of education program or place of training.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 19, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0099'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Dependent's Request for Change of Program or Place of Training, (Under Provisions of Chapter 35, Title 38, U.S.C.).

OMB Control Number: 2900–0099.

Type of Review: Extension of a currently approved collection.

Abstract: Spouses, surviving spouses, or children of Veterans who are eligible for Dependent's Educational Assistance, complete VA Form 22–5495 to change their program of education and/or place of training. VA uses the information collected to determine if the new program selected is suitable to their abilities, aptitudes, and interests and to verify that the new place of training is approved for benefits.

Affected Public: Individuals or Households.

Estimated Annual Burden: 13,034 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 52,135.

Dated: May 14, 2013.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–11844 Filed 5–17–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0046]

Proposed Information Collection (Statement of Heirs for Payment of Credits Due Estate of Deceased Veteran) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a claimant's eligibility for refundable credit.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 19, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov*; or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0046 in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Statement of Heirs for Payment of Credits Due Estate of Deceased Veteran, VA Form Letter 29–596.

OMB Control Number: 2900–0046.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–596 is use by administrator, executor, or next of kin to support a claim for money in the form of unearned or unapplied insurance premiums due to a deceased veteran's estate.

Affected Public: Individuals or households.

Estimated Annual Burden: 78 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 312.

Dated: May 14, 2013.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–11846 Filed 5–17–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0111]

Proposed Information Collection (Statement of Purchaser or Owner Assuming Seller's Loans) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine release of liability and substitution of entitlement of Veterans-sellers to the government on guaranteed, insured and direct loans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 19, 2013.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0111'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA. With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Statement of Purchaser or Owner Assuming Seller's Loans, VA Form 26–6382.

OMB Control Number: 2900–0111.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 26–6382 is completed by purchasers who are assuming veterans' guaranteed, insured, and direct home loans. The information collected is essential in the determinations for release of liability as well as for credit underwriting determinations for substitution of entitlement. If a veteran chooses to sell his or her VA guaranteed home, VA will allow a qualified purchaser to assume the veteran's loan and all the responsibility under the guaranty or insurance. In regard to substitution of entitlement cases, eligible Veteran purchasers must meet all requirements of liability in addition to having available loan guaranty entitlement.

Affected Public: Individuals or households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,000.

Dated: May 14, 2013.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–11907 Filed 5–17–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0696]

Proposed Information Collection (Availability of Educational, Licensing, and Certifications Records) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine whether payments provided to educational institutions and licensing and certification organizations are correct.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 19, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0696'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Availability of Educational, Licensing, and Certifications Records; 38 CFR 21.4209.

OMB Control Number: 2900–0696.

Type of Review: Extension of a currently approved collection.

Abstract: Educational institutions offering approved courses and licensing and certification organizations offering approved tests are required to make their records and accounts pertaining to eligible claimants available to VA. The data collected will be used to ensure benefits paid under the education programs are correct.

Affected Public: Not-for-profit institutions.

Estimated Annual Burden: 6,000 hours.

Frequency of Response: On occasion.

Estimated Average Burden Per Respondents: 5 hours.

Estimated Annual Responses: 3,000.

Dated: May 14, 2013.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–11839 Filed 5–17–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0011]

Proposed Information Collection (Application for Reinstatement (Insurance Lapsed More Than 6 Months), and Application for Reinstatement (Non Medical—Comparative Health Statement)) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to reinstate a claimant's Government Life Insurance and/or Total Disability Income Provision.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 19, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0011 in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: Application for Reinstatement (Insurance Lapsed More than 6 Months), Government Life Insurance and/or Total Disability Income Provision, VA Form 29–352, and Application for Reinstatement (Non Medical—Comparative Health Statement), Government Life Insurance, VA Form 29–353.

OMB Control Number: 2900–0011.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 29–352 and 29–353 are used to apply for reinstatement of insurance and/or Total Disability Income Provision that has lapsed for more than six months. VA uses the information collected to establish the applicant's eligibility for reinstatement.

Estimated Annual Burden:

a. VA Form 29–352—750 hours.

b. VA Form 29–353—375 hours.

Estimated Average Burden per Respondent:

a. VA Form 29–352—30 minutes.

b. VA Form 29–353—15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Form 29–352—1,500.

b. VA Form 29–353—1,500.

Dated: May 14, 2013.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–11837 Filed 5–17–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0144]

Proposed Information Collection (HUD/VA Addendum to Uniform Residential Loan Application) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to apply for a home loan guaranty.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 19, 2013.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0144'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C.

3501–3521), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA. With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: HUD/VA Addendum to Uniform Residential Loan Application, VA Form 26–1802a.

OMB Control Number: 2900–0144.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 26–1802a serves as a joint loan application for both VA and the Department of Housing and Urban Development (HUD). Lenders and Veterans complete the form to apply for home loans.

Affected Public: Individuals or households.

Estimated Annual Burden: 20,000 hours.

Estimated Average Burden per Respondent: 6 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 200,000.

Dated: May 14, 2013.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–11841 Filed 5–17–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0698]

Proposed Information Collection (Application for Educational Assistance To Supplement Tuition Assistance) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine claimants' eligibility for educational assistance to supplement tuition assistance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 19, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0698'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Educational Assistance to Supplement Tuition Assistance; 38 CFR 21.1030(c), 21.7140(c)(5)

OMB Control Number: 2900–0698.

Type of Review: Revision of a currently approved collection.

Abstract: Claimants who wish to receive educational assistance administered by VA to supplement tuition assistance administered by the Department of Defense must apply through VA. VA will use the data collected to determine the claimant's eligibility to receive educational assistance to supplement the tuition assistance he or she has received and the amount payable.

Affected Public: Not-for-profit institutions.

Estimated Annual Burden: 2,000 hours.

Frequency of Response: On occasion.

Estimated Average Burden Per Respondents: 12 minutes.

Estimated Annual Responses: 10,000.

Dated: May 14, 2013.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–11840 Filed 5–17–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0249]

Proposed Information Collection (Loan Service Report) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to service delinquent home loans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 19, 2013.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0249'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA. With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Loan Service Report, VA Form 26–6808.

OMB Control Number: 2900–0249.

Type of Review: Revision of a currently approved collection.

Abstract: VA personnel complete VA Form 26–6808 during personal contact with delinquent obligors. VA will use the information collected to determine whether a loan default is insoluble or whether the obligor has reasonable prospects for curing the default and maintaining the mortgage obligation in the future. The information will also be used to intercede with the holder of the loan to accept a specially arrange repayment plan or other forbearance aimed at assisting the obligor in retaining his or her home.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,083 hours.

Estimated Average Burden per Respondent: 25 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 5,000.

Dated: May 14, 2013.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–11838 Filed 5–17–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0365]

Proposed Information Collection (Request for Disinterment) Activity: Comment Request

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine a claimant entitlement to disinter the remains of a loved one from or within a national cemetery.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 19, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Mechelle Powell, National Cemetery Administration (40D), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *mechelle.powell@va.gov*. Please refer to ''OMB Control No. 2900–0365'' in any correspondence. During the comment period, comments may be viewed online through *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mechelle Powell at (202) 461–4114 or Fax (202) 273–6695.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Disinterment, VA Form 40–4970.

OMB Control Number: 2900–0365.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 40–4970 to request removal of remains from a national cemetery for interment at another location. Interments made in national cemeteries are permanent and final. All immediate family members of the decedent, including the person who initiated the interment, (whether or not he/she is a member of the immediate family) must provide a written consent before disinterment is granted. VA will accept an order from a court of local jurisdiction in lieu of VA Form 40–4970.

Affected Public: Individuals or households.

Estimated Annual Burden: 55.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 329.

Dated: May 14, 2013.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–11843 Filed 5–17–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0138]

Proposed Information Collection (Request for Details of Expenses) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a claimant's appropriate rate of pension.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 19, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0138'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Details of Expenses, VA Form 21–8049.

OMB Control Number: 2900–0138.

Type of Review: Extension of a currently approved collection.

Abstract: VA will use the data collected on VA Form 21–8049 to determine the amounts of any deductible expenses paid by the claimant and/or commercial life insurance received in order to calculate the current rate of pension. Pension is an income–based program, and the payable rate depends on the claimant's annual income.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,700 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 22,800.

Dated: May 14, 2013.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–11845 Filed 5–17–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0652]

Proposed Information Collection (Request for Nursing Home Information in Connection With Claim for Aid and Attendance) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine eligibility for aid and attendance for claimants who are patients in nursing home.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 19, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0652'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Nursing Home Information in Connection with Claim for Aid and Attendance, VA Form 21–0779.

OMB Control Number: 2900–0652.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected on VA Form 21–0779 is used to determine Veterans residing in nursing homes eligibility for pension and aid and attendance. Parents and surviving spouses entitled to service–connected death benefits and spouses of living Veterans receiving service connected compensation at 30 percent or higher

are also entitled to aid and attendance based on status as nursing home patients.

Affected Public: Business or other for–profit.

Estimated Annual Burden: 8,333 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 50,000.

Dated: May 14, 2013.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–11842 Filed 5–17–13; 8:45 am]

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Part II

Department of Health and Human Services

45 CFR Part 98
Child Care and Development Fund (CCDF) Program; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 98

RIN 0970–AC53

Child Care and Development Fund (CCDF) Program

AGENCY: Office of Child Care (OCC), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administration for Children and Families (ACF) proposes to amend the Child Care and Development Fund (CCDF) regulations. This proposed rule makes changes to CCDF regulatory provisions in order to strengthen health and safety requirements for child care providers, reflect current State and local practices to improve the quality of child care, infuse new accountability for Federal tax dollars, and leverage the latest knowledge and research in the field of early care and education to better serve low-income children and families.

DATES: In order to be considered, comments on this proposed rule must be received on or before August 5, 2013.

ADDRESSES: Interested persons are invited to submit comments to the Office of Child Care, 370 L'Enfant Promenade SW., Washington, DC 20024, Attention: Cheryl Vincent, Office of Child Care, or electronically via the Internet at *http://www.regulations.gov.* If you submit a comment, please include your name and address, identify the docket number for this rulemaking (ACF–2013–0001), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, or delivery to the address above, but please submit your comments and material by only one means. A copy of this Notice of Proposed Rulemaking may be downloaded from *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Cheryl Vincent, Office of Child Care, 202–205–0750 (not a toll-free call). Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Time.

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I. Executive Summary

Need for the regulatory action. The Child Care and Development Fund (CCDF) is the primary Federal funding source devoted to providing low-income families with access to child care and improving the quality of child care. It has the twin goals of promoting families' economic self-sufficiency by making child care more affordable, and fostering healthy child development and school success by improving the quality of child care. This proposed regulatory action is needed to improve accountability broadly across many areas of the CCDF program, but is especially focused on ensuring children supported by CCDF funds are in safe, healthy, quality child care, and empowering parents with transparent information about the child care choices available to them.

Last reauthorized in 1996, the CCDF program has not undergone any significant review in more than 15 years, yet it has far-reaching implications for America's poorest children. It provides child care assistance to 1.6 million children from nearly 1 million low-income working families. Half of the children served are living at or below poverty level. In addition, children who receive CCDF are cared for alongside children who do not receive CCDF, by approximately 500,000 participating child care providers, some of whom lack basic assurances needed to ensure children are safe, healthy and learning.

National surveys have demonstrated that most parents logically assume their child care providers have had a background check, had training in child health and safety, and are regularly monitored (National Association of Child Care Resource and Referral Agencies, *National Parent Polling Results,* 2011). However, State policies surrounding the training and oversight of child care providers vary widely and may not include these requirements. In addition, approximately 10 percent of CCDF children are cared for in unregulated centers and homes, meaning there is little to no oversight with respect to compliance with basic standards designed to safeguard children's well-being, such as first-aid and safe sleep practices. This can leave children in unsafe conditions, even as their care is being funded with public dollars. There have been many documented instances of children being injured or even dying in child care, some of which were due to a lack of basic requirements for child care providers. While it is not possible to eliminate all tragic circumstances, this proposed rule focuses on preventing these situations by increasing accountability for protecting the health and safety of children in child care. It would add requirements for child care providers serving children receiving CCDF assistance, including background checks, pre-service training in specific areas of health and safety, and strengthened monitoring of providers.

Yet, compliance with health and safety standards is not enough to ensure that children are getting the quality child care they need to support their healthy development and school success. A growing body of research demonstrates that the first five years of a child's cognitive and emotional development establish the foundation for learning and achievement throughout life. This is especially true for low-income children who face a school readiness and achievement gap and can benefit the most from high quality early learning environments. Children receiving CCDF subsidies come from low-income families and typically start school far behind their peers in key areas such as language development and problem-solving skills. Research shows that the quality and stability of adult, child relationships matter and positive, lasting interactions with caregivers can help foster the development and learning needed to help close those gaps. In light of this research, many States, Territories, and Tribes, working collaboratively with the Federal

government, have taken important steps to make the CCDF program more child-focused and family-friendly; however, implementation of these evidence-informed practices is uneven across the country and critical gaps remain.

Beyond improving health and safety, CCDF can address this in two ways; first by investing in the quality of child care and providing parents with the transparent information they need to find that care, and second by improving the stability of care through implementation of family-friendly policies.

First, parents often lack basic information about child care providers—including whether they have a consistent track record of meeting health and safety standards and information about the quality and qualifications of the caregivers. This proposed rule includes a set of provisions designed to provide greater transparency to parents so they can make more informed choices for their families and to facilitate quality improvement efforts by child care providers. It makes available, for both CCDF parents and the general public, clear, easy-to-understand information about the quality of child care providers in their communities. In addition, it facilitates replication of best practices across the country by directing States, Territories, and Tribes toward making more purposeful investments in child care quality improvement and tracking the progress and success of those investments.

Secondly, this proposed rule includes provisions to make the CCDF program more ''family friendly'' by reducing unnecessary administrative burdens on families (as well as State, Territory, and Tribal agencies administering the program), and by improving coordination with other programs serving low-income families. Currently, most families receiving CCDF-assistance participate in the program for only 3 to 7 months, and many are still eligible when they leave the program. Parents often find it difficult to navigate administrative processes and paperwork required to maintain their eligibility and State policies can be inflexible to changes in a family's circumstances. In some States, if a parent loses their job they also lose their child care assistance right away, making it difficult to look for a new job. If a parent finds a new job they may have to reapply for CCDF and find themselves on a waiting list. This disrupts both the parents' economic stability and the relationship that a child has with his or her caregiver. Research has shown that breaks in the relationship that a child has with a caregiver is detrimental to optimal child development, especially for infants and toddlers. Changes in this proposed rule support a set of policies that will stabilize families' access to child care assistance and in turn, help stabilize their employment and maintain the stability of the child's care arrangement.

Legal authority. This proposed regulation is being issued under the authority granted to the Secretary of Health and Human Services by the CCDBG Act (42 U.S.C. 9858, *et seq.*) and Section 418 of the Social Security Act (42 U.S.C. 618).

Summary of the major provisions of this proposed regulatory action. This proposed rule includes regulatory changes for CCDF in four priority areas: (1) improving health and safety in child care; (2) improving the quality of child care; (3) establishing family-friendly policies; and (4) strengthening program integrity.

The proposed rule would improve health and safety protections for children receiving CCDF assistance by specifying minimum State health and safety standards for their child care providers, including pre-inspections for compliance with State and local fire, health, and building codes, criminal background checks and pre-service training in specific areas, such as first aid and CPR. The proposed rule requires States to take steps to improve the monitoring of child care providers who receive CCDF to care for children by conducting unannounced, on-site visits to CCDF providers.

In addition to establishing a floor of basic health and safety, this proposed rule seeks to improve the quality of child care and provide parents with information about child care providers available to them. It requires that States post information about health, safety and licensing history of child care providers on a user-friendly Web site and establish a hotline for parents to submit complaints about child care providers. The proposal builds on practices adopted by more than half the States by requiring establishment of provider-specific quality indicators, such as through a Quality Rating and Improvement System (QRIS), reflecting teaching staff qualifications, learning environment, and curricula and activities. This makes it easier for parents to compare child care providers and choose a provider that best meets their family's needs. It also encourages States to adopt an organized framework for their quality improvement activities including helping child care providers meet higher standards and helping them improve their education and training. Finally, the proposed rule addresses the lack of supply of high quality care, by asking States to identify areas of the highest need and use grants or contracts directly with child care providers to improve the quality in those places.

To increase stability in the lives of low-income families receiving CCDF, this proposed rule includes family-friendly policies to make it easier for parents to access and maintain their child care assistance. It establishes a 12-month period for re-determining eligibility and allows parents who lose their job to remain eligible for a period of time while they look for a new job. It allows States more flexibility to minimize requirements for families to maintain their eligibility and to waive co-payments for families. These provisions also make it easier for States to align CCDF policies with other programs that may be serving the families, such as the Supplemental Nutrition Assistance Program (SNAP), Medicaid, the Children's Health Insurance Program, and Early Head Start and Head Start.

Finally, this proposed rule improves program integrity by requiring States with high rates of improper payments for the CCDF program to develop a plan for reducing those rates in accordance with the Improper Payments Elimination and Reduction Act. It also adds new provisions requiring States to have in place effective internal controls for sound fiscal management, processes for identifying fraud and other program violations, and procedures for accurately verifying a family's eligibility.

This proposed rule recognizes the importance of State, Territory, and Tribal flexibility in administration of the program. In many areas the proposed rule establishes a clear expectation for States, Territories and Tribes, but allows a range of implementation options to fit their individual circumstances. For example, it allows States, Territories, and Tribes to exempt relatives and caregivers in the child's home from some or all of the CCDF health and safety requirements and to set the period of time they allow for a family to search for a job. The preamble highlights the ways that the proposed rule incorporates practices common in many States and identifies alternative options for implementing new requirements. In many cases, the examples are illustrative and States can identify the best approaches for their jurisdictions. Similarly, we expect especially wide variation in approaches adopted by Tribes. ACF is committed to consulting with Tribal leadership on the provisions of this proposed rule and we

look forward to working with Tribes on practices that are a good fit for Tribal communities.

Cost and benefits. Changes in this proposed rule directly benefit children and parents who use CCDF assistance to pay for child care. The 1.6 million children who are in child care funded by CCDF would have stronger protections for their health and safety, which addresses every parent's paramount concern. But the effect of these changes would go far beyond the children who directly participate in CCDF. Not only children who receive CCDF, but all the children in the care of a participating CCDF provider, will be safer because that provider has had a background check and is more knowledgeable about CPR, first aid, safe sleep for infants, and the safe transportation of children. The consumer education and transparency provisions in this proposed rule will benefit not only CCDF families, but all parents selecting child care by requiring States to post provider-specific information about child care providers on a public Web site with information about health and safety and licensing requirements. Several provisions in this proposed rule benefit child care providers by encouraging States to invest in high quality child care providers and professional development and to take into account quality when they determine child care payment rates. It also places a stronger emphasis on practices States use to reimburse providers, such as ensuring timely payments and paying for absence days which is a common practice in the child care market.

There are a significant number of States, Territories, and Tribes that have already implemented many of these policies and we have been purposeful throughout to note these numbers. The cost of implementing the changes in this proposed rule will vary depending on a State's specific situation. ACF does not believe the costs of this proposed regulatory action would be economically significant and that the tremendous benefits to low-income children justify costs associated with this proposed rule.

II. Background

A. Child Care and Development Fund (CCDF)

The CCDF program is administered by the Office of Child Care (OCC), Administration for Children and Families (ACF) in the Department of Health and Human Services (HHS). CCDF funds are allocated through formula grants to State, Territory, and Tribal Lead Agencies. CCDF provides financial assistance to low-income families to access child care so they can work or attend a job training or educational program. The program also provides funding to improve the quality of child care and increase the supply and availability of child care for all families, including those who receive no direct assistance through CCDF.

Over 12 million young children regularly rely on child care to support their healthy development and school success. Additionally, more than 8 million children participate in a range of school-age programs before- and after-school and during summers and school breaks. CCDF is the primary Federal funding source devoted to providing low-income families with access to child care and before-and after-school care and improving the quality of care. Each year, States, Territories, and Tribes invest $1 billion in CCDF funds to support child care quality improvement activities that are designed to create better learning environments and more effective caregivers in child care centers and family child care homes across the country.

CCDF was created more than 15 years ago, after Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Pub. L. 104–193), a comprehensive welfare reform plan that included new work requirements and provided supports to families moving from welfare to work, including new consolidated funding for child care. This funding, provided under section 418 of the Social Security Act (42 U.S.C. 618), combined with funding from the Child Care and Development Block Grant (CCDBG) Act of 1990 (42 U.S.C 9858 *et seq.*), was designated by HHS as the Child Care and Development Fund. CCDF regulations published in 1998 at 45 CFR parts 98 and 99 implemented the child care provisions of PRWORA and, excepting the addition of a new Subpart K to require Lead Agencies to report improper payments, the regulations have undergone only minor changes since becoming effective.

At the time current CCDF regulations were drafted, policymakers were concentrated on re-positioning an entitlement-based welfare system into one that provided benefits provisionally based on work. The resulting focus of the CCDF regulations was largely dedicated to the goal of enabling low-income mothers to transition from welfare to work. This is evident in a fact sheet developed by HHS shortly after passage of PRWORA which stated that the new welfare law provided an increase in child care funding ''to help more mothers move into jobs.'' (*http://www.acf.hhs.gov/programs/cse/pubs/1996/news/prwora.htm*) CCDF was closely tied to the new Temporary Assistance for Needy Families (TANF) program which focused on assisting needy families through promotion of job preparation and work activities.

In the decade and a half since PRWORA, the focus of the CCDF program has changed as we have learned a remarkable amount about the value of high quality early learning environments for young children. CCDF is a dual purpose Federal program with a two-generational impact. Low-income parents need access to child care in order to work and gain economic independence and low-income children benefit the most from a high quality early learning setting. Traditionally, CCDF has been understood as primarily providing access to child care to support work, with a secondary focus on supporting children's development by improving the quality of child care. We believe these purposes—access and quality—are not competing, but synergetic.

Federal CCDF dollars should provide access to high quality care in recognition of the impact CCDF has on our nation's most disadvantaged and vulnerable children. We do not intend to diminish the importance of CCDF as a work support. Yet, in order to fully leverage the Federal investment, we must be accountable for ensuring that children supported with CCDF funds are placed in safe, healthy, nurturing settings that are effective in promoting learning, child development and school readiness. This dual purpose, two-generational framework envisions the program as an investment supporting the child's long-term development and providing the parent with an opportunity to work or participate in job training or educational activities with peace of mind about their children's safety and learning.

CCDF regulations pre-date much of the current science on brain development in the early years of children's lives. Ten years ago, HHS (in collaboration with other Federal agencies and private partners) funded the National Academies of Science report, *Neurons to Neighborhoods.* (National Research Council and Institute of Medicine, *From Neurons to Neighborhoods: The Science of Early Childhood Development,* 2000) The findings from this report showed that brain development is most rapid during the first five years of life, and that early experiences matter for healthy development. Nurturing and stimulating care given in the early years of life build

optimal brain architecture that allows children to maximize their enormous potential for learning. On the other hand, hardship in the early years of life can lead to later problems. Interventions in the first years of life are capable of helping to shift the odds for those at risk of poor outcomes toward more positive outcomes. A multi-site study conducted by the Frank Porter Graham Child Development Institute found that, ''. . . children who experienced higher quality care are more likely to have more advanced language, academic, and social skills. Moreover, the study found that quality child care matters more for at-risk children.'' (University of North Carolina, *The Children of the Cost, Quality, and Outcomes Study Go to School: Executive Summary,* 1999)

Evidence continues to mount regarding the influence children's earliest experiences have on their later success and the role child care can play in shaping those experiences. The most recent findings from the National Institute of Child Health and Human Development (NICHD) found that the quality of child care children received in their preschool years had small but detectable effects on their academic success and behavior all the way into adolescence. (U.S. Department of Health and Human Services, National Institutes of Health, *Study of Early Child Care and Youth Development,* 2010) A recent follow-up study to the well known Abecedarian Project, which began in 1972 and has followed participants from early childhood through adolescence and young adulthood, found that adults who participated in a high quality early childhood education program are still benefiting from their early experiences. According to the study, Abecedarian Project participants had significantly more years of education than peers and were four times more likely to earn college degrees. (Frank Porter Graham Child Development Institute, *Developmental Psychology,* 2012)

In addition, millions of school-age children participate in before-and after-school programs that support their learning and development. Participation in high quality out-of-school time programs is correlated with positive outcomes for youth, including improved academic performance, work habits and study skills. (Vandell, D., et al., *The Study of Promising After-School Programs,* Wisconsin Center for Education Research, 2005) An analysis of over 70 after-school program evaluations found that evidence-based programs designed to promote personal and social skills were successful in improving children's behavior and school performance. (Durlak, J. and Weissberg, R., *The Impact of Afterschool Programs that Seek to Promote Personal and Social Skills,* Collaborative for the Advancement of Social and Emotional Learning, 2007)

After-school programs also promote youth safety and family stability by providing supervised settings during hours when children are not in school. Parents with school-aged children in unsupervised arrangements face greater stress that can impact the family's well-being and successful participation in the workforce. (Barnett and Gareis, *Parental After-School Stress and Psychological Well-Being,* Journal of Marriage and the Family, 2006) CCDF plays a critical role in providing access to school-age care and improving the quality of programs, with over a third of children receiving CCDF subsidies being aged 6 to 12.

Because of the strong relationship between early experience and later success, investments in improving the quality of early childhood and before-and after-school programs can pay large dividends. Nurturing and responsive relationships with parents and caregivers and engaging learning environments in early care and education settings can provide young children with the capacity for tremendous growth. Children attending high quality school-age programs are more likely to succeed in school and have stronger social and inter-personal skills. In short, high quality early education is a linchpin to creating an educational system that is internationally competitive and vital to the country's workforce development, economic security, and global competitiveness.

As a block grant, CCDF offers a great deal of flexibility to State, Territory, and Tribal Lead Agencies administering the program. The first goal listed at section 658A of the CCDBG Act is ''to allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within such State.'' This structure has allowed many States to test and experiment with subsidy policies that are child-focused, family-friendly and fair to child care providers, as well as to implement sophisticated quality improvement systems that aim to increase the number of low-income children in high quality child care. Many States also have made significant progress in shaping and developing coordinated systems of early learning and have pioneered professional development systems that offer child care providers opportunities to move towards professional advancement in their careers.

CCDF is a core component of the early care and education spectrum and often operates in conjunction with other programs including Head Start, Early Head Start, State pre-kindergarten, and before-and after-school programs. States have flexibility to use CCDF to provide children enrolled in these programs full-day, full-year care, which is essential to supporting low-income working parents. CCDF also provides the funding for quality improvements impacting children in all types of settings, not just those children receiving subsidies. CCDF has helped lay the groundwork for development of early learning systems, investments that are leveraged by the Race to the Top Early Learning Challenge (RTT–ELC), a grant competition administered jointly by the Department of Education and HHS. RTT–ELC provides incentives and supports to selected States to build a coordinated system of early learning and development to ensure more children from low-income families have access to high quality early learning programs and are able to start school with a strong foundation for future learning. RTT–ELC is a vehicle for States to demonstrate ways to integrate and align resources and policies across the spectrum of early care and education programs. Much of the existing early learning systems and quality investments already in place and supported by CCDF parallel many of the goals and priorities of RTT–ELC, resulting in a complementary national strategy to improve the quality of early learning programs across the country.

Finally, ACF recently overhauled and reorganized the structure and required content of the CCDF Plan (ACF–118). States, Territories, and Tribes must submit their CCDF Plans every two years. The Plan serves as the application for CCDF funds and provides a description of the Lead Agency's child care program and services available to eligible families. Changes were made to the CCDF Plan to enhance the health and safety and quality improvement sections with a focus on building systems for child care quality improvement.

This proposed rule is driven by the same priorities and vision for child care reform reflected in the changes made to the CCDF Plan and follows many of the same principles for improvements in early care and education supported by Congress through creation of RTT–ELC. It is informed by the many documented tragedies of child injuries and deaths in child care, it recognizes what has been learned from early childhood development research, supports replication of best practices across the

country, and infuses new accountability for Federal dollars to leverage the full impact of the CCDF dual investment for both parents and children.

B. Discussion of Changes Made in This Proposed Rule

The changes included in this proposed rule cover four priority areas: (1) Improving health and safety in child care; (2) improving the quality of child care; (3) establishing family-friendly policies; and (4) strengthening program integrity.

First, we know that health and safety is the foundation for building a high quality early learning environment. Research shows that licensing and regulatory requirements for child care affect the quality of care and child development. (Adams, G., Tout, K., Zaslow, M., *Early care and education for children in low-income families: Patterns of use, quality, and potential policy implications,* Urban Institute, 2007) All States receiving CCDF funds are required to have child care licensing systems in place and must ensure child care providers serving children receiving subsidies meet certain health and safety requirements. In this rule, we propose changes that strengthen health and safety requirements and monitoring of compliance with these requirements for child care providers serving children receiving CCDF assistance.

Second, improving the quality of child care is essential to support low-income children's early learning and parents need more transparent information about the quality of child care choices available to them. States administering the CCDF program have already begun building quality improvement systems which make strategic investments to provide pathways for providers to reach higher quality standards. More than half the States have implemented Quality Rating and Improvement Systems (QRIS) and the majority of the remaining States are piloting or planning for implementation of such systems. Our priority for quality improvement would incorporate a systemic organizational framework for improving the quality of child care into CCDF regulations, and provide a consumer education mechanism that helps parents better understand the health, safety and quality standards met by child care providers.

Third, we have prioritized establishing family-friendly policies in order to improve continuity of services for parents and stability of child care arrangements for children. Continuity of services contributes to improved job stability and is important to a family's financial health. One of the goals of the CCDF program is to help families achieve independence from public assistance. This goal can be undermined by policies that result in unnecessary disruptions to receipt of a subsidy due to administrative barriers or other processes that make it difficult for parents to maintain their eligibility and thus fully benefit from the support it offers. Continuity also is of vital importance to the healthy development of young children, particularly the most vulnerable. Unnecessary disruptions in services can stunt or delay socio-emotional and cognitive development because safe, stable environments allow young children the opportunity to develop the relationships and trust necessary to comfortably explore and learn from their surroundings. Research has also demonstrated a relationship between child care stability and social competence, behavior outcomes, cognitive outcomes, language development, school adjustment, and overall child well-being. (Adams, G., Rohacek, M., & Danzinger, A. *Child Care Instability,* The Urban Institute, 2010) This priority area includes a number of proposed changes including requirements for determining a child's eligibility for services and administrative processes for interactions with families and child care providers.

Fourth, we have prioritized strengthening program integrity by proposing changes that address policies for internal controls, fiscal management, documenting and verifying eligibility, and processes for identifying fraud and improper payments. In November 2009, the President issued Executive Order 13520, which underscored the importance of reducing improper payments and eliminating waste in Federal programs (74 FR 62201). Program integrity efforts can help ensure that limited program dollars are going to low-income eligible families for which assistance is intended. The proposed changes seek to strengthen accountability while continuing to preserve access for eligible children and families.

In large part, the changes in this proposed rule articulate a set of expectations for how Lead Agencies are to satisfy certain requirements in the CCDBG Act, which the current regulations either only minimally address or where they remain altogether silent. In some places, such as § 98.41 regarding health and safety standards for providers serving subsidized children, the current regulations are silent as to specific standards providers are expected to meet. The lack of specificity in regulation effectively undermines the requirement since there is no clear guidance on what the requirements mean or the manner in which Lead Agencies should implement them. In other areas of the regulations, we have proposed changes to better balance the dual purposes of the program by adding provisions to ensure that healthy, successful child development is a consideration when Lead Agencies establish policies for the child care program. For example, authorization of child care services for eligible families should take into consideration the value of preserving continuity in child care arrangements so that young children have stability in their caregivers.

Finally, we have proposed other changes to the regulations that do not impose new requirements on Lead Agencies, but rather formalize Federal support for certain best practices and policies. This can be seen in the proposed changes to § 98.51 of the regulations which require Lead Agencies to spend a minimum of four percent on child care quality improvement activities. We have added regulatory language to this section describing a formal framework for quality spending that is focused on helping Lead Agencies organize, guide, and measure progress of quality improvement activities, but we are not requiring Lead Agencies to adopt that framework.

In developing this proposed rule, we were mindful of the Administration's emphasis on flexibility as a guiding principle when considering ways to better accomplish statutory goals. Accordingly, we have sought to retain much of the flexibility that is afforded to Lead Agencies inherent within the CCDF block grant. In many areas where we have added new requirements we are deferring to Lead Agencies to decide how they will implement the provision and have provided examples of alternate ways in which the requirement could be met. In other areas we have added more flexibility to allow Lead Agencies to align eligibility and other requirements across programs and to tailor policies that better meet the needs of the low-income families they serve. For example, we are providing more flexibility for Lead Agencies to determine when it is appropriate to waive a family's co-pay requirement.

We do not anticipate that these proposed changes will place significant new burden on States, Territories or Tribes because many Lead Agencies have already implemented these practices through their child care licensing systems and by using the flexibility in the CCDF program provided under current law. We have

made it a point throughout this rule to include information about the number of States and Territories that have already adopted the changes we are proposing. In addition, a number of Tribes have undertaken improvements in many of these areas, including health and safety requirements. This proposed rule at once embraces the progress and benefits that have resulted from devolving significant program authority to States, Territories, and Tribes while also identifying specific areas where new Federal standards and regulation will most benefit the core principles and goals of the CCDF program.

ACF expects provisions included in a Final Rule to become effective 30 days from the date of publication of the Final Rule. Compliance with provisions in the Final Rule would be determined through ACF review and approval of CCDF Plans and through the use of Federal monitoring in accordance with § 98.90, including on-site monitoring visits as necessary. ACF expects that provisions included in a Final Rule would be incorporated into the review of FY 2016–2017 CCDF Plans that would become effective October 1, 2015. We recognize that some of the proposed changes may require action on the part of a State's legislature or require rulemaking in order to implement. It is our desire to work with Lead Agencies to ensure that adoption of any new requirements included a Final Rule is done in a thoughtful and comprehensive manner. ACF welcomes public comment on specific provisions included in this proposed rule that may warrant a longer phase-in period and will take these comments into consideration when developing the Final Rule.

In this proposed rule, we have generally maintained the structure and organization of the current CCDF regulations. The preamble in this proposed rule discusses the changes to current regulations and contains certain clarifications based on ACF's experience in implementing the prior final rules. Where language of existing regulations remains unchanged, the preamble explanation and interpretation of that language published with all prior final rules also is retained unless specifically modified in the preamble to this proposed rule. (*See* 57 FR 34352–34413, August 4, 1992; 63 FR 39936–39981, July 24, 1998; 72 FR 27972–27980, May 18, 2007; 72 FR 50889–50900. September 5, 2007)

III. Statutory Authority

This proposed regulation is being issued under the authority granted to the Secretary of Health and Human Services by the CCDBG Act (42 U.S.C. 9858, *et seq.*) and Section 418 of the Social Security Act (42 U.S.C. 618).

IV. Provisions of Proposed Rule

Subpart A—Goals, Purposes and Definitions

Goals and Purposes (Section 98.1)

We are proposing changes to enhance the regulatory language describing purposes of the CCDF program to reflect the priorities of improving health and safety in child care, improving the quality of child care, establishing family-friendly policies, and strengthening program integrity. The first part of the regulations at § 98.1(a) defines the goals of CCDF and mirrors the statutory language describing goals of the CCDBG Act. We are proposing no changes in this section. The second part at § 98.1(b) uses regulatory authority to define purposes for the CCDF program which are based on purposes included in the conference report accompanying original passage of the CCDBG Act in 1990. We propose to revise the purposes described at § 98.1(b).

We have retained all of the language in the original purposes with some enhancements and added two new purposes (proposed changes are represented in italics). Specifically, we propose to revise paragraph (b) to read: (1) Provide low-income families with the financial resources to find and afford *high* quality child care for their children *and serve children in safe, healthy, nurturing child care settings that are highly effective in promoting learning, child development, school readiness and success;* (2) Enhance the quality and increase the supply of child care *and before-and after-school care services* for all families, including those who receive no direct assistance under the CCDF, *to support children's learning, development, and success in school;* (3) Provide parents with a broad range of options in addressing their child care needs *by expanding high quality choices available to parents across a range of child care settings and providing parents with information about the quality of child care programs; (4) Minimize disruptions to children's development and learning by promoting continuity of care; (5) Ensure program integrity and accountability in the CCDF program;* (6) Strengthen the role of the family *and engage families in their children's development, education, and health;* (7) Improve the quality of, and coordination among *Federal, State, and local* child care programs, *before-and after-school programs,* and early childhood development programs *to support early learning, school readiness, youth development, and academic success;* and (8) Increase the availability of early childhood development and before- and after-school care services.

We believe these changes bring the purposes of CCDF into better alignment with the current knowledge in the field, result in a more comprehensive vision of the program, and provide the foundation for a more balanced approach to program administration that acknowledges the two-generational impact of the CCDF program.

Definitions (Section 98.2)

We propose to make four technical changes at § 98.2 by deleting the definition for *group home child care provider* and by making conforming changes to the definitions for *categories of care, eligible child care provider,* and *family child care provider.* The current regulation defines *group home child care provider* as meaning two or more individuals who provide child care services for fewer than 24 hours per day per child, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work. When ACF revised the FY 2012–2013 CCDF Plan, we received public comments indicating that many States, Territories and Tribes do not consider group homes to be a separate category of care when administering their CCDF programs or related efforts, such as child care licensing. Some States use alternative terminology (e.g., large family child care homes), while others treat all family child care homes similarly regardless of size. Due to this variation, we propose to delete the separate definition for *group home child care provider* which requires a number of technical changes to the definitions section.

We propose to revise the definition of *categories of care* at § 98.2 to delete group home child care. Under the proposed rule, *categories of care* would be defined to include center-based child care, family child care, and in-home care (i.e., a provider caring for a child in the child's home). Similarly, we propose to change the definition for *eligible child care provider* at § 98.2 to delete a group home child care provider. The revised definition defines an *eligible child care provider* as a center-based child care provider, a family child care provider, an in-home child care provider, or other provider of child care services for compensation. Group home child care would be considered a family child care provider for these purposes. Accordingly, we propose to amend the definition for *family child care provider* at § 98.2 to include larger family homes or group homes. The existing definition

of *family child care provider* is limited to one individual who provides services as the sole caregiver. The revised definition defines a *family child care provider* as one or more individuals who provide child care services. The remainder of the definition remains the same, specifying that services are for fewer than 24 hours per day per child, in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work.

Many Lead Agencies will continue to provide CCDF services for children in large family child care homes or group homes, and this is allowable and recognized by the revised definition of *family child care provider*—which would now include care in private residences provided by more than one individual. This proposed change would eliminate group homes as a separately-defined category of care for purposes of administering the CCDF—thereby providing States, Territories, and Tribes with greater flexibility. As a practical impact, CCDF Lead Agencies will no longer be required to report separately on group homes in their CCDF Plans (for example, regarding health and safety requirements), or to consider group homes as a separate category for purposes of meeting parental choice requirements at § 98.30 and equal access requirements at § 98.43(b)(1). Rather, group homes will now be considered as family child care homes for these purposes.

Subpart B—General Application Procedures

Lead Agencies have considerable latitude in administering and implementing their child care programs. Subpart B of the regulations describes some of the basic responsibilities of a Lead Agency as found in the statute. A Lead Agency is designated by the chief executive of a State or Territory, or by the appropriate Tribal leader or applicant, and serves as the single point of contact for all child care issues. The Lead Agency determines the basic use of CCDF funds and the priorities for spending CCDF funds and promulgates the rules governing overall administration.

Specifically, under existing rules, the Lead Agency responsibilities include oversight of CCDF funds spent by sub-grantees and contractors, monitoring programs and services, responding to complaints, and developing the CCDF Plan in the manner specified by the Secretary. In developing the CCDF Plan, the Lead Agency must consult with the appropriate representatives of local government, coordinate the provision of services with other Federal, State, and local child care and early childhood development programs and ''programs, including such programs for the benefit of Indian children, and hold at least one public hearing. Other Lead Agency responsibilities include having an independent audit conducted after the close of each program period, ensuring that sub-grantees are audited in accordance with appropriate audit requirements, and submission of fiscal and program reports as prescribed by HHS.

Lead Agency Responsibilities (Section 98.10)

We propose to add a provision to Lead Agency responsibilities at § 98.10 to require Lead Agencies to be responsible for implementing practices and procedures to ensure program integrity and accountability as a conforming change pursuant to the proposed new section at 98.68 Program Integrity at Subpart G—Financial Management. We include an explanation for this new section and change later in this proposed rule.

Administration Under Contracts and Agreements (Section 98.11)

Section 98.11 of the regulations currently requires Lead Agencies that administer or implement the CCDF program indirectly through other local agencies or organizations to have written agreements with such agencies that specify mutual roles and responsibilities. However, it does not address the content of such agreements. We propose amending regulatory language at § 98.11(a)(3) to specify that, while the content of Lead Agency written agreements with other governmental or non-governmental agencies may vary based on the role the entity is asked to assume or the type of project undertaken, agreements must, at a minimum, include tasks to be performed, a schedule for completing tasks, a budget that itemizes categorical expenditures consistent with proposed CCDF requirements at § 98.65(h), and indicators or measures to assess performance.

Many Lead Agencies administer the CCDF program through the use of sub-recipients that have taken on significant programmatic responsibilities, including providing services on behalf of the Lead Agency. For example, some States operate primarily through a county-based system, while other Lead Agencies devolve decision-making and administration to local workforce boards, school readiness coalitions or community-based organizations such as child care resource and referral agencies. ACF has learned through our efforts working with grantees to improve program integrity that the quality and specificity of written agreements vary widely, which hampers accountability and efficient administration of the program. These proposed changes represent minimum, common-sense standards for the basic elements of those agreements, while allowing latitude in determining specific content. The Lead Agency is ultimately responsible for ensuring that all CCDF-funded activities meet the requirements and standards of the program, and thus has an important role to play to ensure written agreements with sub-recipients appropriately support program integrity and financial accountability.

Plan Process (Section 98.14)

Coordination. Currently, § 98.14(a)(1) requires Lead Agencies to coordinate provision of program services with other Federal, State, and local early care and development programs as required by section 658D(b)(1)(D) of the CCDBG Act. Lead Agencies also are required to consult and coordinate services with agencies responsible for public health, public education, employment services/workforce development, and TANF. Over time, the CCDF program has become an essential support in local communities to provide access to early care and education and before and afterschool settings and to improve the quality of care. Partnerships with these agencies and local communities have been an important factor in improving the availability and quality of child care. Many Lead Agencies work collaboratively to develop a coordinated system of planning that includes a governance structure composed of representatives from the public and private sector, parents, schools, community-based organizations, child care, Head Start and Early Head Start, home visitation, as well as health, mental health, child welfare, family support, and disability services. Local coordinating councils or advisory boards also often provide input and direction on CCDF-funded programs.

We propose to amend § 98.14(a)(1) to add new entities with which Lead Agencies are required to coordinate the provision of child care services. We have added parenthetical language to paragraph (C) public education, to specify that coordination with public education should also include agencies responsible for prekindergarten programs, if applicable, and educational services provided under Part B and C of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400). Other proposed new coordinating

entities include agencies responsible for child care licensing, afterschool networks, Head Start collaboration, the State Advisory Council on Early Childhood Education and Care authorized by the Head Start Act (42 U.S.C. 9831 *et seq.*) (if applicable); and emergency management and response.

First, we propose to add a specification to the existing regulatory requirement to coordinate with agencies responsible for public education at § 98.14(a)(1)(C) to include prekindergarten, if applicable, and educational services provided through Part B and C of IDEA. Part B of the IDEA provides funding for Special Education Preschool grants. According to the National Institute for Early Education Research (NIEER), 40 States funded preschool programs during the 2009–2010 school year. (*The State of Preschool 2010,* NIEER, Rutgers graduate School of Education) Prekindergarten programs generally serve 3 and 4-year olds and aim to better prepare children to succeed in kindergarten. Similar to Head Start, many CCDF Lead Agencies coordinate services with children enrolled in prekindergarten programs to provide full-day, full-year care. Given the prevalence of State-funded prekindergarten programs and overlapping populations and purposes with the CCDF program we believe it is important to include these entities as a required coordinating partner.

State education agencies use IDEA funds to provide special education and related services for preschool-aged children with disabilities. Part C of the IDEA provides funding to provide early intervention services for infants and toddlers with disabilities and their families. Since the establishment of the Part C early intervention program under IDEA, all States have established State Interagency Coordinating Councils (SICCs) to advise and assist in the implementation of Part C for infants and toddlers with disabilities and their families. We believe this specification is important to ensure that Lead Agencies take into account children with special needs in child care and coordinate with other services available to children with disabilities and their families. Linkages between child care providers caring for children who have physical, developmental, behavioral, or emotional conditions and medical and therapeutic services can help make inclusion a reality by integrating additional resources and expertise needed to help care for children in a continuous and comprehensive manner. In the FY 2012–2013 CCDF Plans, nearly all States and Territories reported coordinating with agencies responsible for children with special needs, including IDEA implementation. [Note: The analysis of CCDF Plans throughout this proposed rule includes a total of 56 State and Territorial CCDF Plans, including American Samoa, Guam, Northern Marianas Islands, Puerto Rico, and the Virgin Islands.] Through these partnerships, many Lead Agencies provide joint training and collaborative technical assistance on child development and on the inclusion of children with disabilities in child care programs.

We propose to add child care licensing agencies as a required coordinating entity at new paragraph (E) to formalize a partnership that already exists in many States. Section 658A of the CCDBG Act provides that one of the goals of the program is ''to assist States in implementing the health, safety, licensing, and registration standards established in State regulations.'' According to the FY 2012–2013 CCDF Plans, 34 States and Territories indicate coordinating provision of CCDF services with agencies responsible for child care licensing. Child care licensing regulations and monitoring and enforcement policies help provide a baseline of protection for the health and safety of children in out-of-home care. According to the *2011 Child Care Licensing Study* (prepared by the National Child Care Information and Technical Assistance Center and the National Association for Regulatory Administration), there are a total of 312,000 licensed facilities in the U.S. with more than 10 million licensed child care slots. In addition, the study found that most State licensing agencies use CCDF funds to hire and support child care licensing staff.

We believe it is important that CCDF Lead Agencies collaborate with agencies responsible for child care licensing to ensure that information is shared about the licensing or regulatory status of providers serving children receiving subsidies, especially any history of licensing violations. To the extent that child care licensing agencies are responsible for monitoring compliance with State regulatory requirements, strong partnerships can help improve program integrity within CCDF by ensuring that providers serving children receiving subsidies are accountable for meeting health and safety and other regulatory requirements. We encourage CCDF Lead Agencies also to coordinate with licensing agencies when developing quality improvement systems to incorporate basic licensing requirements as part of the framework for determining program standards and a foundation for improving the quality of care.

We propose to add the Head Start collaboration office as a required coordinating entity at new paragraph (F) because CCDF services can be linked with the Head Start program to help support provision of full-day, full year care for children enrolled in Head Start and eligible for the CCDF program. The Head Start Act (42 U.S.C. 9801, *et seq.*) provides funding for each State to establish a Head Start collaboration office to promote linkages between Head Start, Early Head Start, and other child and family services. This proposed change has reciprocity with the requirement in the Head Start Act and would formalize a partnership that already exists in 46 States and Territories according to the FY 2012–2013 CCDF Plans. In both Head Start and CCDF, collaboration efforts extend to linking with other key services for young children and their families, such as medical, dental and mental health care, nutrition, services to children with disabilities, child support, refugee resettlement, adult and family literacy, and employment training. These comprehensive services are crucial in helping families progress towards self-sufficiency and in helping parents provide a better future for their young children.

We propose to add the agency responsible for the State Advisory Council on Early Childhood Education and Care, if applicable, at new paragraph (G) in recognition of provisions included in the Head Start Reauthorization Act of 2007 (Pub. L. 110–134) which require States to create State Advisory Councils on Early Childhood Education and Care to improve coordination and collaboration among Head Start and Early Head Start agencies, pre-k programs, and other early childhood education providers. In FY 2009, the American Recovery and Reinvestment Act (ARRA) (Pub. L. 111–5) provided funding to States to convene these councils. Fifty States and Territories indicated in the FY 2012–2013 CCDF Plans that they coordinate with the State Advisory Council. State Advisory Councils are often responsible for conducting a statewide needs assessment for early childhood education, developing recommendations for a statewide professional development and career plan for the early childhood education and care workforce, and developing recommendations for establishing a unified data collection system for publicly funded programs offering early childhood education services. Advisory councils may also play a role in making

linkages with Early Childhood Comprehensive Systems (ECCS) grantees within the State. Adding the State Advisory Council on Early Childhood Education and Care to the list of coordinating entities will ensure CCDF Lead Agencies continue to consult with and maintain effective collaboration with this important stakeholder.

We propose to add agencies responsible for administering Statewide afterschool networks or other coordinating entities for out-of-school time care (if applicable) at new paragraph (H). Approximately, 39 States have established statewide afterschool networks. (National Network of Statewide Afterschool Networks, *www.statewideafterschoolnetworks.net*) These networks bring together different stakeholders to consider ways to improve the quality, quantity, and sustainability of school-age programs in their State. The CCDF program provides assistance to children up to age 13, therefore we believe it is critical that child care administrators partner with statewide afterschool networks or other entities, such as State associations of school-age programs, in order to better understand and respond to the unique issues related to improving access to and the quality of before-and-after school programs.

Finally, we propose to add coordination with State and local government agencies responsible for emergency management and response at new paragraph (I) because maintaining the safety of children in early care and school-age programs in the event of a disaster or emergency necessitates advance planning by Lead Agencies and child care providers. In many disasters, including Hurricane Katrina in 2005, the tornado disaster in Joplin, Missouri in 2011, and Hurricane Sandy in 2012, the provision of emergency child care services and rebuilding of child care facilities emerged as a critical need. At the Federal level, ACF has worked with the National Commission on Children and Disasters (NCCD) and the Federal Emergency Management Agency (FEMA) to raise awareness of child care as a key component in disaster preparedness and response. For example, ACF published an Information Memorandum (CCDF–ACF–IM–2011–01) that provided guidance to assist Lead Agencies in the development of comprehensive statewide emergency preparedness and response plans for child care and the CCDF program.

State, Territorial, and Tribal Lead Agencies can play an important role in helping to better prepare child care providers and support programs after a disaster to help them quickly recover and provide care for children in a safe and effective manner. Child care providers need to be prepared to maintain the safety of children in the event of a disaster or emergency and facilitate safe return of children to families in the immediate aftermath of an event. Additionally, it is important that providers receive the support and help they need to repair damaged property and rebuild so they can re-open and provide child care services for families recovering from the disaster. Lead Agencies must be concerned with ensuring continuity of care and services for families receiving assistance through the CCDF program and providers caring for children who receive subsidies when a disaster strikes. Lead Agencies also may be called upon to assist emergency management officials and voluntary organizations with the provision of emergency child care services after a disaster. We believe adding emergency management agencies as a coordinating partner in the regulation will enable Lead Agencies to better handle these wide-ranging and important roles. Paragraphs (b) and (c) of this section would remain unchanged. As a technical matter, upon publication of the Final Rule we propose to correct the paragraph designations in § 98.14 by changing (a)(1)(A) through (I) to (a)(1)(i) through (ix).

Public availability of Plans. We propose to add a new paragraph § 98.14(d) to require Lead Agencies to make their CCDF Plan and any Plan amendments publicly available. Ideally, Plans and Plan amendments would be available on the Lead Agency Web site or other appropriate State Web site to ensure that there is transparency for the public, and particularly for parents seeking assistance, about how the child care program operates. We believe this is especially important for Plan amendments, given that Lead Agencies often make substantive changes to program rules or administration during the two-year Plan period through submission of Plan amendments (subject to ACF approval), but are not currently required to make those amendments available to the public.

Plan Provisions (Section 98.16)

Submission and approval of the CCDF Plan is the primary mechanism by which ACF works with Lead Agencies to ensure program implementation meets Federal regulatory requirements. All provisions that are currently required to be included in the CCDF Plan are outlined at § 98.16. Accordingly, this section of the regulation is the point at which our four priorities converge. Nearly all of our proposed regulatory changes are reflected in this section. The revisions and proposed additions to this section correspond to proposed changes throughout the regulations, many of which we provide explanation for later in this proposed rule. In addition, these proposed changes are consistent with changes included in the overhaul of the CCDF Plan. The Plan has been reorganized to better reflect State and Territorial practice in CCDF, to focus on a number of areas that are of high interest to both the Federal government and CCDF grantees, and to better capture the hallmarks of CCDF programs throughout the country, which have evolved significantly since its inception in 1996. Paragraph (a) of section 98.16 would continue to require that the Plan specify the Lead Agency.

Written agreements. A new paragraph § 98.16(b) is proposed to correspond with changes at § 98.11(a)(3) discussed earlier, related to administration of the program through agreements with other entities. In the CCDF Plan, the proposed change would require the Lead Agency to include a description of processes it will use to monitor administrative and implementation responsibilities undertaken by agencies other than the Lead Agency including descriptions of written agreements, monitoring, and auditing procedures, and indicators or measures to assess performance. This is consistent with the desire to strengthen program integrity within the context of current State practices that devolve significant authority for administering the program to sub-recipients. Current paragraphs (b) through (e) would be re-designated as paragraphs (c) through (f) and otherwise would remain unchanged.

Job search. We propose to require Lead Agencies to allow for some period of job search for families receiving CCDF assistance that experience job loss. The goal of this change is to minimize temporary disruption to subsidy receipt to promote children's development and learning by helping to sustain their early learning or school-age care placement through temporary periods of parental unemployment. We know that parents are better able to find new jobs quickly if they are allowed to retain their subsidy eligibility, providing the stability and flexibility to search for new employment. This is also consistent with changes we are proposing at § 98.20 describing a child's eligibility for services to promote continuity of subsidy receipt and care arrangements discussed later in this proposed rule.

Families can experience rapid and multiple changes within a short period of time and unemployment and job loss are very disruptive to families. Instability in a family's child care arrangement can make it difficult for parents to seek new employment, and retention of eligibility during a job search or temporary period of unemployment can alleviate some of the stress on families and facilitate a smoother transition back into the workforce. According to analysis of the FY 2012–2013 CCDF Plans, many States and Territories provide CCDF assistance during periods of job search. However, some States only offer job search for certain subsets of families receiving CCDF assistance, such as those also receiving assistance through TANF. Under this proposed change Lead Agencies must allow some period of job search for all families receiving CCDF.

In order to implement this change we propose to add parenthetical language at paragraph § 98.16(g)(6), as re-designated, to require the Lead Agency to include some period of job search in its definition of ''working'' in the CCDF Plan. Currently, paragraph (f) requires Lead Agencies to provide definitions for the following terms in the CCDF Plan: (1) Special needs child; (2) physical or mental incapacity (if applicable); (3) attending (a job training or educational program); (4) job training or educational program; (5) residing with; (6) working; (7) protective services (if applicable); (8) very low-income; and (9) in loco parentis.

We propose to require job search in the definition of ''working'' in the regulation because we view job search as closely linked to work and most Lead Agencies that allow job search already include job search in that definition in the Plan. However, some Lead Agencies currently elect to define job search under their definition of ''attending (a job training or education program)'' rather than ''working'' in the Plan, since job search also can be associated with activities such as attending interviews, job fairs, and résumé building classes; completing applications; and/or participating in job shadowing or unpaid internship opportunities. Therefore, as a technical matter, and in deference to State flexibility, when determining compliance with this provision through review of the CCDF Plan, ACF will continue to allow Lead Agencies to decide whether to include job search in their definition of ''working'' or ''attending (a job training or educational program).''

It should be noted that this proposed change continues to allow Lead Agencies discretion to determine the length of time that ''job search activities'' are counted as a qualifying activity and whether to allow job search as an eligible activity for families applying for subsidy in addition to those currently receiving a subsidy who subsequently become unemployed. This proposal is consistent with the practices that already exist in many programs as well as provisions in the revised CCDF Plan that requires that Lead Agencies describe their policies promoting continuity of care for children and stability for families.

Continuity of care. We propose to add a provision at paragraph § 98.16(h), as re-designated, requiring Lead Agencies to include a description of policies to promote continuity of care for children and stability for families receiving CCDF services, including policies which take into account developmental needs of children when authorizing child care services; timely eligibility determination and processing of applications; and policies that promote employment and income advancement for parents. This change complements proposed changes at § 98.20 describing a child's eligibility for services, which are discussed later in this proposed rule.

The Lead Agency would be required to specify in the Plan the time limit it has established for making eligibility determinations and processing applications. Lead Agencies have flexibility in determining the policies and practices related to parent applications and eligibility determination processes for CCDF subsidies. It is critical for Lead Agencies to design processes that promote timely eligibility determinations for CCDF subsidy applicants, particularly in cases where families need immediate assistance. For example, a parent may be unable to start employment or may risk losing their job if they cannot secure a child care arrangement while waiting for the CCDF subsidy application to be approved. Many Lead Agencies already have implemented policies to improve the timeframe between the receipt of an application and the approval of child care services using web-based application submissions and other systems enhancements to reduce processing time allowing for families and providers to receive authorization more quickly.

A study of mid-western States found that the time for processing applications ranged from 7 to 45 days. (Adams, G., Synder, K., and Banghardt, P., *Designing Subsidy Systems to Meet the Needs of Families,* 2008) This research also identified a number of customer-friendly State practices that promoted timely eligibility determinations, including certain administrative structures (such as consolidated eligibility units) and caseworker targets and timeframes for processing. Many Lead Agencies have established policies that set a time limit for eligibility determinations and electronically track and monitor the eligibility process.

Grants or contracts. We propose to add language at paragraph § 98.16(i)(1), as re-designated, requiring a Lead Agency to include a description of how it will use grants or contracts to address shortages in the supply of high quality child care. Grants and contracts can play an important role in building the supply and availability of high quality child care in underserved areas and for underserved populations, and provide greater financial stability for child care providers. This regulatory change complements proposed changes at § 98.30(a)(1) describing parental choice requirements and § 98.50(b)(3) describing funding methods for child care services, discussed later in this proposed rule. The new provision regarding grants and contracts maintains the principle of parental choice and the requirement that parents be offered a certificate.

Under this proposed change, the Lead Agency would be required to provide a description that identifies any shortages in the supply of high quality child care providers for specific localities and populations, includes the data sources used to identify shortages, and explains how grants or contracts for direct services will be used to address such shortages. To identify supply shortages, the Lead Agency may analyze available data from market price studies, resource and referral agencies, and other sources. ACF recommends that the Lead Agency examine all localities in its jurisdiction, recognizing that each local child care market has unique characteristics—for example, many rural areas face supply shortages. The Lead Agency also should consider the supply of child care for underserved populations such as infants and toddlers and children with special needs. Further, we recommend that the Lead Agency's analysis consider all categories of care, recognizing that a community with an adequate supply of one category of care (e.g., centers) may face shortages for another category (e.g., family child care).

Eligibility policies. We also propose to add language at § 98.16(i)(5) in this section. Currently the provision requires Lead Agencies to describe any eligibility criteria, priority rules and definitions established pursuant to § 98.20(b). We propose to expand the required information to include other eligibility policies, particularly any requirements

for families to report changes in circumstances that may impact eligibility between redetermination periods. The revised provision also adds a reference to § 98.20(c), in addition to the existing reference to § 98.20(b). This change complements proposed changes at § 98.20, which are discussed later in this proposed rule.

Consumer education and quality indicators. We also propose to add language at paragraph § 98.16(j), as re-designated, requiring Lead Agencies to include a description of a transparent system of quality indicators that provides parents with provider-specific information about the quality of child care providers in their communities as part of the description of consumer education activities. This change complements proposed changes at § 98.33 describing consumer education activities, which are discussed later in this proposed rule.

Co-payments. We propose to revise language at paragraph § 98.16(k), as re-designated, requiring Lead Agencies to include a description of how payments are affordable for families as part of the requirement to implement a sliding fee scale that provides for cost sharing for families receiving CCDF subsidies. This proposed change is consistent with the existing regulatory requirement at § 98.43(b)(3), which requires Lead Agencies to provide a summary of facts relied upon to determine that its payment rates ensure equal access including how copayments based on a sliding fee scale are affordable. In addition, we propose to add language requiring the Lead Agency to include the criteria established for waiving contributions for families, pursuant to proposed changes at § 98.42(c), discussed later in this proposed rule.

Monitoring of health and safety requirements. We propose to add a provision at paragraph § 98.16(l), as re-designated, requiring Lead Agencies to provide a description of unannounced, on-site monitoring and other enforcement procedures in effect to ensure that child care providers serving children receiving subsidies comply with applicable health and safety requirements. The change complements proposed changes at § 98.41 describing health and safety requirements, which are discussed later in this proposed rule. Paragraph (k), requiring a description of the child care certificate payment system would be re-designated as paragraph (m), but otherwise would remain unchanged.

Payment rates. We propose to revise language at paragraph § 98.16(n), as re-designated, requiring a description of a biennial local valid market price study, or other alternate approved methodology, and a description of how the quality of child care providers serving children receiving subsidies is taken into account when determining payment rates. This change complements proposed changes at § 98.43 describing equal access provisions, which are discussed later in this proposed rule.

Hotline for parental complaints. We propose to add language at paragraph § 98.16(o), as re-designated, to require States to establish or designate a hotline for parental complaints. This change complements the proposed change at § 98.32 describing requirements for maintaining a record of parental complaints, which is discussed later in this proposed rule. Current paragraph (n) would be re-designated as paragraph (p), but otherwise would remain unchanged.

Licensing exemptions. We propose to add language at paragraph § 98.16(q), as re-designated, requiring a description of any exemptions to licensing requirements and a rationale for such exemptions. This change complements the proposed change at § 98.40 which asks Lead Agencies to certify they have in place licensing requirements for child care services, discussed later in this proposed rule. Paragraph (p), requiring a description of the definitions or criteria used to implement the exception to individual penalties in the TANF program would be re-designated as paragraph (r), but otherwise would remain unchanged.

Provider payment practices and timely reimbursement. We propose to add a new paragraph § 98.16(t) requiring CCDF Lead Agencies to describe payment practices for child care providers of services for which assistance is provided under this part, including timely reimbursement for services, how payment practices support providers' provision of high quality services, and to promote the participation of child care providers in the subsidy system.

Lead Agencies have flexibility to determine payment processes for subsidies, and should use that flexibility to ensure payment practices are fair to child care providers and support the provision of high quality services. As noted in the preamble to the 1998 Final Rule, a system of child care payments that does not reflect the realities of the market makes it economically infeasible for many providers to serve low-income children—undermining the statutory and regulatory requirements of equal access and parental choice. In addition, failure to compensate in a timely manner may cause providers to refuse to care for children with subsidies (63 FR 39958). Surveys and focus groups with child care providers have found that some providers experience problems with late payments, including issues with receiving the *full* payment on time and difficulties resolving payment disputes. (Adams, G., Rohacek, M., and Snyder, K., *Child Care Voucher Programs: Provider Experiences in Five Counties,* 2008) This research also found that delayed payments creates significant financial hardships for the impacted providers, and forces some providers to stop serving or limit the number of children receiving child care subsidies.

A number of Lead Agencies have developed streamlined, provider-friendly payment policies and administrative processes, such as paying providers based on enrollment and paying for a limited number of absence days. Administrative improvements such as direct deposit, on-line training for providers for electronic voucher reimbursement, provider self-service components in an automated system for children authorized into their care, and web-based electronic attendance and billing systems also can help facilitate the participation of providers in the subsidy system. Lead Agencies can allow providers to be paid for days when a child is absent due to an illness and/or allow families a limited number of vacation days where providers would continue to receive payment. These policies would promote continuity of care by allowing the provider to retain the slot for the child without a financial penalty. Private-paying parents generally pay for an entire period (e.g., a week, a month) even if the child is out sick within that period. This policy would align subsidy policies with the general child care market and positively affect subsidy providers while also enabling families to retain child care services.

Program integrity. We propose to add a new paragraph § 98.16(u) requiring a description of processes a Lead Agency has in place to investigate and recover fraudulent payments and to impose sanctions on providers or clients in response to fraud. This change complements proposed changes at section 98.68 describing program integrity requirements, which are discussed later in this proposed rule.

Quality performance report. We also propose to add a new paragraph § 98.16(v) requiring States and Territories to establish performance goals and targets in the Plan for expenditures on activities to improve the quality of care, and report annually a description of progress towards

meeting those goals. This change is consistent with proposed changes at § 98.51(f) regarding quality improvement activities, which are discussed later in this preamble.

The Quality Performance Report (QPR) was recently added as an appendix to the CCDF Plan to improve accountability for quality expenditures and encourage more strategic, intentional planning between the subsidy system and quality initiatives. The report is organized to align with the CCDF Plan and asks Lead Agencies to report on the goals and performance measures that they set for themselves in the Plan. In addition, it asks for key data on the quality of child care. Over time, this data will be used to report to Congress, stakeholders, and the general public on the quality of child care and CCDF's critical role in improving quality. This proposed change would mandate submission of the Quality Performance Report appendix as part of the CCDF Plan process.

Assessment of serious injuries and deaths in child care. In this paragraph we also propose to add § 98.16(v)(2) asking Lead Agencies to describe, as part of the Quality Performance Report, any changes to State regulations, enforcement mechanisms, or other State policies addressing health and safety based on an annual review and assessment of serious injuries or deaths of children occurring in child care. Currently, the Quality Performance Report gives Lead Agencies the option to list and describe the annual number of child injuries and fatalities in child care. We are proposing to require Lead Agencies to answer these questions and to describe the results of an annual review of all serious child injuries and deaths occurring in child care (including both regulated and unregulated child care centers and family child care homes). The review would be publicly available and would include an assessment of whether any State or local regulatory requirements, enforcement mechanism, or other State or local policies addressing health and safety were changed in response to the review. ACF strongly encourages Lead Agencies to work with the State entity responsible for child care licensing in conducting their review.

The primary purpose of this proposed change is prevention of future tragedies. Often, incidents of child injury or death in child care are avoidable. For example, one State recently reviewed the circumstances surrounding a widely-publicized, tragic death in child care and identified several opportunities to improve State monitoring and enforcement that might otherwise have identified the very unsafe circumstances surrounding the child's death and prevented the tragedy. The State moved quickly to make several changes to its monitoring procedures. It is important to learn from these tragedies to better protect children in the future. Lead Agencies should review all serious child injuries and deaths in child care, including lapses in health and safety (e.g., unsafe sleep practices for infants, transportation safety, issues with physical safety of facilities, etc. * * *) to help identify training needs of providers.

The utility of this assessment is reliant upon the State obtaining accurate, detailed information about any child injuries and deaths that occur in child care. Therefore, as discussed later in this preamble, we are requiring at 98.41(d)(4) that Lead Agencies establish policies and procedures for child care providers serving children receiving CCDF support to report any incidents of serious child injuries or deaths to a designated State, territorial or tribal agency, such as the licensing agency. We recommend that States, Territories and Tribes require all child care providers, regardless of subsidy receipt, to report incidents of serious child injuries or death to a designated agency.

Lead Agencies are strongly encouraged to work with their established Child Death Review systems and with the National Center for the Review and Prevention of Child Death (*www.childdeathreveiw.org*) to conduct their annual reviews. The National Center for the Review and Prevention of Child Death, which is funded by the Maternal and Child Health Bureau in the Health Resources and Services Administration (HRSA), reports that all 50 States and the District of Columbia already review child deaths through 1,200 State and local Child Death Review panels (National Center for Child Death Review, Keeping Kids Alive: A Report on the Status of Child Death Review in the Unities States, 2011). The Child Death Review system is a process in which multidisciplinary teams of people meet to share and discuss case information on deaths in order to understand how and why children die so that they can take action to prevent other deaths. These review systems vary in scope and in the types of death reviewed, but every review panel is charged with making both policy and practice recommendations which are usually submitted to the State governor and are publicly available. The National Center for the Review and Prevention of Child Death provides support to local and State teams throughout the child death review process through training and technical assistance designed to strengthen the review and the prevention of future deaths.

Lead Agencies may also work in conjunction with the recently-established National Commission to Eliminate Child Abuse and Neglect Fatalities, established by the Protect Our Kids Act, H.R. 6655. The Commission, consisting of 12 members appointed by the President and Congress, will work to develop recommendations to reduce the number of children who die from abuse and neglect. The Commission will hold hearings and gather information about current Federal programs and prevention efforts in order to recommend a comprehensive strategy to reduce and prevent child abuse and neglect fatalities nationwide. Their report will be issued to both Congress and the President no later than two years after the date on which the majority of members of the Commission have been appointed. Although this Commission will only be studying a subsection of child injuries and death, it is important that the commissioners examine the issue of child abuse and neglect in child care settings.

Finally, we note that the requirement to submit a Quality Performance Report is not applicable to Tribal Lead Agencies, as we are mindful of the reporting burden on Tribes. In the future, ACF may consider asking Tribes to report performance outcomes associated with spending on quality improvement activities through the existing Tribal ACF–700 or ACF–696T reports using the information collection process, which would provide opportunity for public comment. We have re-designated paragraph (r) as paragraph (w) with no other changes.

Approval and Disapproval of Plans and Plan Amendments (Section 98.18)

This section of the regulations describes processes and timelines for CCDF Plan approvals and disapprovals, as well as submission of Plan amendments. CCDF Plans are submitted biennially and prospectively describe how the Lead Agency will implement the program. To make a substantive change to a CCDF program after the Plan has been approved, a Lead Agency must submit a Plan amendment to ACF for approval. The purpose of Plan amendments is to ensure that grantee expenditures continue to be made in accordance with the statutory and regulatory requirements of CCDF, if the grantee makes changes to the program during the two-year Plan period.

Advance written notice. In conjunction with the change discussed

at § 98.14(d) to make the Plan and any Plan amendments publicly available, we propose to add a provision at § 98.18(b)(2) to require Lead Agencies to provide advance written notice to affected parties, specifically parents and child care providers, of changes in the program made through an amendment that adversely affect income eligibility, payment rates, or sliding fee scales. The Lead Agency must provide written notice to affected recipients and child care providers prior to a policy change that will reduce or terminate benefits. The notice should describe the action to be taken (including the amount of any benefit reduction), the reason for the reduction or termination, and the effective date of the action. We are providing Lead Agencies with flexibility to determine an appropriate, specific time period for advance notice, since this may vary depending on the type of policy change being implemented and/or the effective date of that policy change. Advance notice will add transparency to the Plan amendment process and provide a mechanism to ensure that affected parties remain informed of any substantial changes to the Lead Agency's CCDF Plan that may affect their ability to participate in the child care program. For example, if a Lead Agency submits a Plan amendment to revise its sliding fee scale and raise family co-pay amounts, it is important to give advance notice to those families and child care providers because this change may have implications for their ability to continue with their child care arrangement.

We note that section 98.14(c)(1) of the current regulations requires Lead Agencies to conduct at least one statewide public hearing before the CCDF Plan is submitted to ACF. The public hearing serves as a mechanism to provide broad notice and comment for families, child care providers, and other stakeholders regarding key elements of the CCDF program. Lead Agencies routinely submit amendments to their CCDF Plans throughout the two-year period during which the Plan is in effect; yet there is no similar transparency requirement with regards to Plan amendments. We are not requiring the Lead Agency to hold a formal public hearing and solicit comments on each Plan amendment; however, we encourage solicitation of public input whenever possible. We are only requiring notification of substantial changes in the program that adversely affect income eligibility, payment rates, or sliding fee scales. This regulatory change is consistent with the spirit and intent of the public hearing provision. The Lead Agency may choose to issue the notification in a variety of ways, including a mailed letter or email sent to all participating child care providers and families. Paragraph (c) of this section describing appeal and disapproval of a Plan or Plan amendment would remain unchanged.

Subpart C—Eligibility for Services

This subpart establishes parameters for a child's eligibility for child care services under the CCDF program and how Lead Agencies determine and verify eligibility. The current regulatory language defining an eligible child mirrors statutory language in the CCDBG Act. In order to be eligible for child care services, a child must be under the age of 13 (or at the option of the Lead Agency, be under age 19 and physically or mentally incapable of caring for himself or herself, or under court supervision); reside with a family whose income does not exceed 85 percent of State median income for a family of the same size; reside with a parent or parents who are working or attending a job training or educational program; or receive or need to receive protective services, at grantee option this may include children in foster care. The section also describes provisions related to establishment of additional eligibility conditions and priority rules by the Lead Agency. We propose to revise and update this section to promote continuity of care, make a technical change regarding the State Median Income (SMI), expand the scope of the protective services category to provide more flexibility, and refine the regulations concerning eligibility determinations.

A Child's Eligibility for Child Care Services (Section 98.20)

We propose to make several revisions to eligibility requirements under this section that will promote continuity of child care services. As envisioned in this proposed rule, the purpose of CCDF is to develop high-quality child care programs that best suit the needs of children and families as they pursue the dual goals of financial self-sufficiency and healthy development and school success for their children. With those two goals in mind, it is important to emphasize continuity of subsidy receipt when developing eligibility policies. Continuity of subsidy receipt supports financial self-sufficiency by offering working families stability to establish a strong financial foundation while also preparing children for school by creating stable conditions necessary for healthy child development and early learning.

Many families receive CCDF assistance for only short periods of time and have frequent spells of cycling on and off the program. For example, a five-State study has shown that the median length of child care subsidy receipt is often very short, ranging from 3 to 7 months. (Meyers, M.K., et al., *The Dynamics of Child Care Subsidy Use: A Collaborative Study of Five States,* National Center for Children in Poverty, 2002) Preliminary findings from other studies using CCDF administrative data also indicate short subsidy spells. Short periods of subsidy receipt can be the result of a variety of factors, but developing eligibility policies that provide increased continuity for families that continue to need child care assistance would offer valuable support and relief to families working toward long-term stability.

In addition, research has shown that children have better educational and developmental outcomes when they have continuity in their child care arrangements. (Raikes, H., *Secure Base for Babies: Applying Attachment Theory Concepts to the Infant Care Setting,* Young Children 51, no. 5, 1996) For young children, safe, stable environments provide the opportunity to develop the relationships and trust necessary to comfortably explore and learn from their surroundings. Concurrently, research has shown that frequent changes in care arrangements are associated with higher levels of distress and negative behavior in infants and toddlers. (Dicker, S., & Gordon, E., *Ensuring the Healthy Development of Infants in Foster Care; A Guide for Judges, Advocates, and Child Welfare Professionals,* Zero to Three, 2004)

Continuity of care also is important for school-age children because the amount of exposure to programming, or dosage, has been shown to determine the impact such services have on a child. One study revealed that children who actively attended after-school programming showed marked improvement in test scores and school attendance when compared to their peers who were less active or did not participate in the program at all. (Welsh, M., Russell, C., Willimans, I., Reisner, E., and Whites, R., *Promoting Learning and School Attendance through After-school Programs,* Policy Studies Associates, 2002) The effect on attendance is of particular importance because school attendance has been found to be significantly related to sociological and academic outcomes for school-age children. (Gottfried, M., *Evaluating the Relationship Between Student Attendance and Achievement in Urban Elementary and Middle*

Schools: An Instrumental Variables Approach, American Education Research Journal, 2009)

State eligibility policies should take into consideration the importance of continuity in arrangements for children receiving subsidies and what policies make the most sense for supporting the child's developmental outcomes and school readiness, especially if a child is enrolled with a high quality child care provider. Many of the proposed changes in this section seek to improve continuity through implementation of more family-friendly eligibility policies, while recognizing that Lead Agencies need flexibility to make decisions to ensure that funds are appropriately targeted to families in need. The Lead Agency, however, must ensure that its eligibility policies (e.g., related to frequency of eligibility re-determination) are not only included in policy, but also consistently implemented in practice—for example by the localities, sub-recipients, and eligibility workers that implement the program on the Lead Agency's behalf.

As mentioned earlier, the revisions to § 98.20, discussed below, complement new § 98.16(h), which requires Lead Agencies to include in their CCDF Plans a description of policies to promote continuity of care for children and stability for families receiving CCDF services, including policies that take into account developmental needs of children when authorizing child care services, timely eligibility determination and processing of applications, and policies that promote employment and income advancement for parents.

Income eligibility. Lead Agencies are required to report their income eligibility threshold in the CCDF Plan. However, neither the statute nor regulations specify a source or basis for SMI. Therefore, each Lead Agency currently has the ability to determine the data source for the SMI. From a national perspective, this means the SMI levels are not comparable—making it more difficult to get a true understanding of where Lead Agencies are setting their thresholds. We propose to revise § 98.20(a)(2) by adding new paragraph (i) to clarify that eligibility threshold levels should be based on the most recent SMI data that is published by the Bureau of the Census. The proposed clarification would ensure that eligibility criteria are based on the most current and valid available data and provide consistency that allows for cross-State comparisons. SMI data may not be available from the Census Bureau for some Territories, in which case the Territory may use an alternative source.

Income eligibility policies can also play an important role in promoting continuity of services. Lead Agencies have flexibility to establish income eligibility thresholds up to 85 percent of SMI, however many Lead Agencies set eligibility levels at a lower threshold due to resource constraints and competing budgetary priorities. When setting an eligibility threshold that is below 85 percent of SMI, some Lead Agencies have instituted a two-tiered eligibility threshold which provides for initial and continuing income eligibility limits. A preliminary analysis of the FY 2012–2013 CCDF plans shows that 16 States and Territories have implemented policies which provide an entry level eligibility threshold and a higher exit income eligibility threshold.

As an example, a Lead Agency may have a policy that families must have an income at or below 50 percent of SMI in order to access the subsidized child care system. The parent(s) may be determined eligible at an income level just below 50 percent of SMI. Over the course of the next 3 to 6 months the parent may receive a small hourly wage increase which results in exceeding the income eligibility level and losing the family's child care subsidy. This scenario not only could disrupt the child care arrangement, it undermines the goal of helping low-income parents to work and gain economic independence because the increase in child care costs experienced by the family may exceed the amount of the wage increase. The wage increase becomes detrimental to the family's financial success by jeopardizing receipt of a child care subsidy. As an alternative, the Lead Agency could have a policy which requires that parents applying for subsidies have income below 50 percent of SMI, but once determined eligible, allows those parents to have incomes up to 60 percent of SMI before becoming ineligible for the subsidy. This two-tiered approach supports financial success by allowing for a modest amount of wage growth and a gradual transition out of the program by minimizing abrupt disruptions in services.

In recognition of the fact that many States set eligibility thresholds below 85 percent of SMI, we are not proposing a regulatory change to require a two-tiered eligibility policy. Yet, ACF recommends that Lead Agencies consider this policy as a strategy that allows families to retain child care assistance while experiencing modest success in the job market. This approach is consistent with the goal of improving continuity of child care services and can help prevent unnecessary churning on and off of the program by allowing for some amount of wage growth as families work towards greater self-sufficiency.

Protective services. Section 658P(3) of the CCDBG Act indicates that, for CCDF purposes, an eligible child includes a child who is receiving or needs to receive protective services. Under current regulations at § 98.20(a)(3)(ii)(B), at the option of the Lead Agency, this category may include children in foster care. The regulations allow that children deemed eligible based on protective services may reside with a guardian or other person standing ''in loco parentis'' and that person is not required to be working or attending job training or education activities in order for the child to be eligible. In addition, the regulations allow grantees to waive income eligibility and co-payment requirements as determined necessary on a case-by-case basis, by, or in consultation with, an appropriate protective services worker for children in this eligibility category. According to a preliminary analysis of the FY 2012–2013 CCDF Plans, at least 44 States and Territories provide child care subsidies to children receiving or in need of protective services. Additionally, at least 35 States and Territories elect to waive, on a case-by-case basis, the fee and income eligibility requirements for cases in which children receive, or need to receive, protective services. For children in foster care, 11 States and Territories have elected to provide child care subsidies regardless of the foster parents' work status or participation in education or training activities.

The regulatory provision concerning protective services was put in place in recognition of the unique and distinct aspects of children in protective services wherein child care serves the child's needs as much or more than the parents' needs. Additionally, because the statute references children who ''need to receive protective services,'' we believe the intent of this language was to provide services to at-risk children, not to limit this definition to serve children already in the child protective services system. We are proposing to formally clarify this in regulation by adding language as § 98.20(a)(3)(ii) specifying that the protective services category may include specific sub-populations of vulnerable children as identified by the Lead Agency. Thus, children need not be formally involved with child protective services or the child welfare system in order to be considered eligible for CCDF assistance under this category. Similarly, we also propose to delete the language indicating that the case-by-

case determination of income and co-payment requirements for this category must be made by, or in consultation with, a protective services worker. These changes will provide Lead Agencies with additional flexibility to offer services to those who have the greatest need, including high-risk populations.

As an example, a family living in a homeless shelter may not meet certain eligibility requirements (e.g. work or income requirements), but the child is in a vulnerable situation and could benefit greatly from access to high-quality child care services. This would have a dual benefit of offering the child access to care that supports child development, education, and health while also offering support to the family as they work towards finding a home and stabilizing their lives. Another vulnerable population that could benefit from access to child care services is the migrant worker community. Since the employment or income status of a migrant family may fluctuate throughout the year, stable access to child care services would prevent the child's development from being negatively impacted by variable working and living conditions.

Eligibility re-determination periods. Neither the CCDBG Act nor the CCDF regulations currently address the frequency of eligibility re-determinations or whether the Lead Agency must ensure the child is eligible on a continuous basis. We propose to add a new paragraph § 98.20(b) establishing that Lead Agencies may re-determine a child's eligibility for child care services no sooner than 12 months following the initial eligibility determination or most recent re-determination. In conjunction with this change, the proposed new paragraph provides that during the period of time between re-determinations, a Lead Agency, at its option, may consider a child to be eligible pursuant to some or all of the eligibility requirements specified in paragraph (a), if the child met all of the requirements in paragraph (a) on the date of the most recent eligibility determination or re-determination. Finally, this proposed change would require Lead Agencies to specify in the CCDF Plan any requirements for families to report changes in circumstances that may impact eligibility between re-determinations. These provisions would also apply to any localities or sub-recipients that implement the CCDF program on the Lead Agency's behalf.

Over time, many Lead Agencies have changed their policies to allow for longer eligibility re-determination periods. One State found that 86 percent of its families were still eligible for subsidies at the time of their required 6 month re-determination. As a result, in order to reduce administrative burden on families, the State switched to a 12 month re-determination period for most families. Studies also suggest that a significant number of families are still income-eligible for child care services, by both Federal and State eligibility criteria, when they leave the CCDF program. (Grobe, D., Weber, R.B., & Davis, E.E., *Why Do They Leave? Child Care Subsidy Use in Oregon.* Oregon State University, 2006) According to the FY 2012–2013 CCDF Plans, slightly more than half of the States and Territories require eligibility re-determination at 6 months, one State has an 8 month re-determination requirement, and the remainder have 12 month eligibility re-determination periods.

ACF believes a 12 month re-determination period is the most consistent with the programmatic goals of promoting continuity of care and financial self-sufficiency for CCDF families. Lead Agencies would be allowed to adopt re-determination periods longer than 12 months. For example, a Lead Agency could establish a child's eligibility to continue until kindergarten entry to align with Head Start or extend eligibility to facilitate partnerships between child care and Early Head Start programs serving infants and toddlers. We recognize that this proposed change would require some Lead Agencies to change policy in this area by moving from a 6 month to a 12 month re-determination period. Therefore we are requesting comment regarding the impact of this change, particularly any benefits or burdens it may have for CCDF families and to better understand implications for Lead Agencies.

In conjunction with this change we propose to add language that would allow Lead Agencies the option to consider a child eligible (pursuant to some or all of the eligibility requirements) during the period of time between re-determinations, as long as the child met CCDF eligibility requirements on the date of eligibility determination or re-determination. We believe this proposed change would allow Lead Agencies to adopt more family-friendly eligibility policies, to align eligibility requirements with other assistance programs, and promote continuity in child care subsidy receipt. In the past, ACF has received questions from Lead Agencies seeking guidance regarding instances in which a family's circumstances may change after initial eligibility determination or between re-determination periods, and whether the Lead Agency would be subject to a disallowance if it was determined that, during those interim periods, the family no longer met CCDF eligibility requirements.

This proposed change acknowledges that there are costs and other challenges associated with monitoring and verifying eligibility on a continuous basis to ensure that at any given point in time a family is eligible for services. These include costs to families that are trying to balance work and family obligations as well as costs to Lead Agencies administering the program. This proposed change clarifies that the Lead Agency is responsible for correctly determining and verifying eligibility at the time of initial eligibility determination and periodic re-determinations conducted thereafter, as the most reasonable and practical application of the statutory intent establishing eligibility criteria for CCDF. Lead Agencies are not required to implement policies that ''look back'' at a family's eligibility in the months prior to a re-determination and, if the family is found to be ineligible upon re-determination, seek to recoup funds from the family for benefits received in prior months.

We note the proposed change indicates that a Lead Agency, at its option, may consider a child to be eligible pursuant to some or all of the eligibility requirements between eligibility re-determinations. This gives States latitude to decide which elements of CCDF eligibility, if any, to track between eligibility re-determinations. A Lead Agency may establish a family's eligibility for 12 months (or longer) and only identify changes to a family's circumstances at the time of the next re-determination and make necessary adjustments to the CCDF benefit then as appropriate. Alternately, a Lead Agency could set criteria for limited, significant changes that it will track between eligibility re-determinations, examining all other eligibility criteria at the time of the next re-determination. For example, the Lead Agency may establish criteria that require families to report changes in circumstances (if the State does not have other mechanisms for learning about the change) related to any changes in income above a certain threshold—but evaluate other eligibility criteria at the time of re-determination. ACF recommends that States require parents receiving subsidies to report a job loss between eligibility determinations to initiate the allowable period of job search. However, State policies that track all eligibility criteria on a

continuous basis and require more frequent reporting of changes in circumstances remain allowable, but are not recommended. Under the proposed change, Lead Agencies would be required to specify in the Plan any requirements for families to report changes in circumstances that may impact eligibility between re-determinations.

For school-age children, the proposed change would allow Lead Agencies to avoid terminating access to valuable high quality before-and after-school care in a manner that may be detrimental to positive youth development and academic success or put the child at-risk if a parent is working and cannot be with the child after school. As an example, in order to promote continuity of care for a 12-year old child enrolled in a before-or after-school program and supported by CCDF, the Lead Agency could schedule the family's re-determination date at the beginning of the school year and schedule the next re-determination to occur after the school year has ended. Therefore, if the child turned 13 during the school year, the child would continue to be able to participate in their before-or after-school program, as opposed to being abruptly removed immediately after the child's birthday. In addition, this type of policy can ease administration of school-age programs by making the eligibility of children receiving subsidies more commensurate with the school year.

We strongly encourage Lead Agencies to adopt reasonable policies for tracking eligibility that minimize compliance burdens on families and promote self-sufficiency. Many low-income families have frequent fluctuations in work schedules and hours of work. Strict requirements that families report all changes in circumstances in a short time frame, even those that do not directly impact eligibility, can make it more difficult for working families to maintain their eligibility, increase administrative burden, and could result in children having to leave child care providers with whom they have bonded. According to the FY 2012–2013 CCDF Plans, 20 States and Territories report implementing policies to minimize reporting requirements for changes in family circumstances that have no effect on a family's eligibility in order to promote continuity of care.

We also encourage Lead Agencies to consider how they can align CCDF eligibility policies with other programs serving low-income families. This proposed change is consistent with practices in other Federal programs serving low-income families which allow States the option to certify families as eligible for a specified period of time. For example, the Head Start program requires that families be eligible at an initial eligibility determination and allows the child to remain eligible until they enter school. A Lead Agency could establish eligibility periods longer than 12 months for children enrolled in Head Start and receiving CCDF, since children enrolled in Head Start remain eligible until they enter school—creating a better alignment between programs. Similarly, a Lead Agency could establish longer eligibility periods during an infant and toddler's enrollment in Early Head Start. The Supplemental Nutrition Assistance Program's (SNAP) simplified reporting requirements provide States the option of requiring households to report changes in income between certification and scheduled reporting periods only when total countable income rises above 130 percent of the poverty level. In SNAP, a Lead Agency may require a household that has been certified as eligible for a 12 or 6-month period to submit a periodic report (as opposed to a face-to-face visit), generally about halfway through the certification period, for which certain changes that have occurred since certification must be reported. Similarly, provisions in the Medicaid and Children's Health Insurance Program (CHIP) allow States the option to provide children with continuous 12 month eligibility. The changes proposed in this rule promote conformity across Federal programs by providing options to Lead Agency's to simplify CCDF reporting and eligibility requirements for families receiving assistance from multiple programs.

In proposing this change, ACF is cognizant of the importance of ensuring CCDF funds are effectively and efficiently targeted towards eligible low-income families. Policies to promote continuity, such as lengthening eligibility periods and allowing a child to remain eligible between re-determination periods, necessarily must be founded on a strong commitment to program integrity. ACF expects Lead Agencies to have rigorous processes in place to detect fraud and improper payments, but these should be reasonably balanced with family-friendly practices. In order to ensure that only eligible families receive CCDF assistance, Lead Agencies should focus administrative dollars on making sure that a family's eligibility is determined accurately at the initial determination and at times designated for re-determination. For this reason, the proposed rule includes the addition of a new section at § 98.68 titled *Program Integrity* that requires Lead Agencies to have procedures in place for documenting and verifying that children meet eligibility criteria at the time of eligibility determination and re-determination.

Lead Agencies receive a fixed amount of CCDF funds and often face challenges determining how to appropriately allocate resources. When implementing their CCDF programs, Lead Agencies must balance ensuring compliance with eligibility requirements with other considerations, including administrative feasibility, program integrity, promoting continuity of care for children, and aligning child care with Head Start, Early Head Start, and other early childhood programs to promote partnerships. This proposed change removes any uncertainty regarding applicability of Federal eligibility requirements for CCDF and the threat of potential penalties or disallowances that otherwise may inhibit a Lead Agencies' ability to balance these priorities in a way that best meets the needs of children in families within their jurisdiction.

Developmental needs of the child. We propose to amend § 98.20 to add paragraph (d) requiring Lead Agencies to take into account the developmental needs of the child when authorizing child care services. Under this proposed change, Lead Agencies would not be restricted to limiting authorized child care services based on the work, training, or educational schedule of the parent(s). This is consistent with the current regulations at § 98.20(a)(3)(i) requiring that the child ''reside with'' a parent or parents who are working or attending a job training or educational program. One of the goals of this proposed rule is to enhance recognition of the role of CCDF as a child development program by emphasizing access to early learning and afterschool settings that support children's success, as well as enabling parents to work. In service of this goal, this proposed change clarifies that Lead Agencies should take into account the developmental and academic needs of children—not just their parents' work or training needs—as part of eligibility, intake, authorization, and other CCDF policies and practices.

As an example, in serving a preschool aged child (e.g., age 3 or 4), the Lead Agency should consider whether or not the child has access to a high quality preschool setting and how CCDF can make attendance at a high quality preschool more likely. Many Lead Agencies tie access to child care subsidies closely with parental work

hours, which may limit access to high quality settings. If most local high quality early learning programs offer only full-time slots, but the child care authorization reflects only the parent's part-time work schedule, the child may be unable to attend a high quality early learning program, which is especially critical for low-income children in the year preceding kindergarten. Lead Agencies are encouraged to authorize adequate hours to allow the child to participate in a high quality program. Alternatively, Lead Agencies can partner with Early Head Start, Head Start, prekindergarten, or other high quality programs to build an intentional package of arrangements for the child—that allows for both attendance at preschool and perhaps a second arrangement that accommodates the parents' work schedule.

Specifically, it is important for infants and toddlers to build secure attachments and maintain relationships with caregivers over time to promote healthy child development. For example, a Lead Agency may wish to authorize part-day CCDF services that accommodate a child's participation in Early Head Start, while also maintaining a secondary child care arrangement to preserve the relationship with a familiar caregiver. A Lead Agency could also offer parents the choice to select high-quality infant slots that are funded through contracts or grants with infant and toddler programs. For children of all ages, a Lead Agency could provide more intensive case management for children with multiple risk factors to increase the likelihood that the family will find a stable, quality child care arrangement that will work with other services providers in assisting the child and family.

This proposed provision acknowledges that both the child's development and the parent's need to work are factors in the service needs of each family. We recognize that given constraints on funding, limited human resource capacity, and the inadequate supply of high quality care, a perfect arrangement will not be found in all cases. Rather, we expect Lead Agencies to consider how they can infuse the needs of children into their policies and practices and encourage partnerships with high quality providers, child care resource and referral agencies, and case management partners to look for ways to strengthen CCDF's capacity to fulfill its child development mission for families. Lead Agencies retain flexibility on how to carry out this provision and ACF expects to provide technical assistance to support innovation in this area.

Subpart D—Program Operations (Child Care Services) Parental Rights and Responsibilities

In the description of goals for the child care program, section 658A(b)(2) of the CCDBG Act includes, ''to promote parental choice to empower working parents to make their own decisions on the child care that best suits their family's needs.'' Subpart D of the regulations describes parental rights and responsibilities and provisions related to parental choice, including unlimited parental access to their children, requirements that Lead Agencies maintain a record of parental complaints, and consumer education activities conducted by Lead Agencies to increase parental awareness of the range of child care options available to them. We have proposed a number of changes to this subpart including provisions directed towards increasing the supply of high quality child care, establishment of a hotline for parental complaints, consumer education activities to increase awareness of the quality of child care choices available to parents receiving subsidies, and ensuring parents receive specific information about the child care provider they select.

Parental Choice (Section 98.30)

Use of grants or contracts. Section 658E(c)(2)(A)(i) of the CCDBG Act requires that Lead Agencies provide assurances that parents are given the option to enroll their child with a child care provider that has a grant or contract to provide child care services or to receive a child care certificate. Current regulations at § 98.30(a) require that Lead Agencies offer eligible parents a child care certificate, or to enroll the child with a provider that has a grant or contract ''if such services are available.'' The statutory language does not include this clause; instead it was added through regulation. The proposed change would delete the phrase ''if such services are available'' at § 98.30(a)(1) and add ''in accordance with § 98.50.'' As discussed later in this preamble, we propose to modify § 98.50(b)(3) to read that child care services shall be provided using methods provided for in § 98.30, *which must include the use of grants or contracts for the provision of direct services, with the extent of such services determined by the Lead Agency after consideration of supply shortages described in the Lead Agency's Plan pursuant to § 98.16(i)(1), and other factors as determined by the Lead Agency.* We believe the current regulatory language undermines the strength of the parental choice statutory requirement by sending the message that contracts are of secondary importance to vouchers and need not be used as a mechanism for providing direct services. The proposed change would retain the requirement for Lead Agencies to offer parents a child care certificate or voucher.

In 2011, CCDF administrative data showed that approximately 90 percent of children receiving child care assistance were served through certificates (also referred to as vouchers). According to a preliminary analysis of the FY 2012–2013 CCDF Plans, only 21 States and Territories indicated that they provide child care services through grants or contracts through child care slots. We do not believe the intent of the CCDBG statute was to create a system solely operated through certificates. In fact, the statute does not give priority or preference to the use of certificates or vouchers, but reflects a balance between using both certificates and grants or contracts to provide child care assistance. Grants and contracts play a vital role in meeting the needs of underserved populations, and increase the choices available to parents.

While the majority of States and Territories rely on certificates to provide child care assistance to eligible families, some States and Territories have reported in their CCDF Plans using grants and contracts to increase the supply of specific types of child care. These include contracts to fund programs to serve children with special needs, targeted geographic areas, infants and toddlers, and school-age children. Grants and contracts are also used to provide wrap-around services to children enrolled in Head Start and prekindergarten to provide full-day, full-year care and to fund programs that provide comprehensive services. Additionally, Lead Agencies report using grants and contracts to fund child care programs that provide higher quality child care services.

The proposed revision retains the requirement that the Lead Agency operate a certificate program and that eligible families be offered a certificate, however the change requires Lead Agencies to find ways to also incorporate grants or contracts into their administration of the CCDF program, with specific consideration for how grants or contracts can be used to address shortage in the supply of high quality child care. Child care certificates can be an effective means of ensuring parental choice when providing child care assistance. However, demand-side mechanisms like certificates are only fully effective when there is an adequate

supply of child care. Multiple research studies have shown a lack of supply of certain types of child care and for certain localities. Child care supply in many low-income and rural communities is often low, particularly for infant and toddler care, school-age children, children with disabilities, and families with non-traditional work schedules. Parents in low-income communities also report that the regulated infant and toddler care or care for special needs children that is available is often unaffordable or of low quality. (Paulsell, D., Nogales, R., and Cohen, *Quality Child Care for Infants and Toddlers,* 2003) We provide further discussion of this proposed change regarding grants and contracts at Subpart F—Use of Child Care and Development Funds. Current paragraphs (b), (c), and (d) would remain unchanged.

We also propose a technical change at § 98.30(e) to delete group home child care from the variety of child care categories from which parents receiving a certificate for child care service must be able to choose. This is consistent with the changes made at § 98.2 removing group home child care from the definition of categories of care and eligible child care provider. As discussed earlier, instead we have modified the definition of family child care provider to include one or more individuals to be inclusive of group home care within this category. Current paragraph (f) at this section would remain unchanged.

Parental choice and child care quality. In order to be meaningful, we believe the parental choice requirements included in this section should give parents access to high quality child care arrangements across different types of providers that foster healthy development and learning for children. Many Lead Agencies have invested a significant amount of CCDF funds to implement quality rating and improvement systems (QRIS) to promote high quality early care and education programs, and some have expressed concerns that the current language of the parental choice regulatory provisions inhibits their ability to link the child care subsidy program to these systems. In order to fully leverage their investments, Lead Agencies are seeking to increase the number of children receiving CCDF subsidies that are enrolled with providers participating in the quality improvement system. ACF published a Policy Interpretation Question (CCDF–ACF–PIQ–2011–01) clarifying that parental choice provisions within regulations do not automatically preclude a Lead Agency from implementing policies that require child care providers serving subsidized children to meet certain quality requirements, including those specified within a quality improvement system. As long as certain conditions are met to protect a parent's ability to choose from a variety of categories of care, a Lead Agency could require that in order to provide care to children receiving subsidies, the provider chosen by the parent must meet requirements associated with a specified level in a quality improvement system.

We propose to incorporate this policy interpretation into regulation by adding paragraph (g) at § 98.30 to clarify that, as long as parental choice provisions at paragraph (f) of this section are met, parental choice provisions should not be construed as prohibiting a Lead Agency from establishing policies that require child care providers that serve children receiving subsidies to meet higher standards of quality as defined in a quality improvement system or other transparent system of quality indicators (discussed later in this proposed rule). Section 98.30(f) prohibits Lead Agencies from implementing health and safety or regulatory requirements that significantly restrict parental choice by expressly or effectively excluding any category or type of provider, as defined at § 98.2, or any type of provider within a category of care. Section 98.2 currently defines categories of care as center-based child care, group home child care, family child care, and in-home care (i.e., a provider caring for a child in the child's own home). (Note: We are proposing to delete group homes as a category of care at § 98.30(e)(1)). Types of providers are defined as non-profit, for-profit, sectarian, and relative providers.

When establishing such policies, we encourage Lead Agencies to assess the availability of care across categories and types, and availability of care for specific subgroups (e.g. infants, school-age children, families who need weekend or evening care) and within rural and underserved areas, to ensure that eligible parents have access to the full range of categories of care and types of providers before requiring them to choose providers that meet certain quality levels. Should a Lead Agency choose to implement a quality improvement system that does not include the full range of providers, the Lead Agency would need to have reasonable exceptions to the policy to allow parents to choose a provider that is not eligible to participate in the quality improvement system (e.g. relative care). As an example, a Lead Agency may implement a system that incorporates only center-based and family child care providers. In cases where a parent selects a center-based or family child care provider, the Lead Agency may require that the provider meet a specified level or rating. However, the policy also must allow parents to choose other categories and types of child care providers that may not be eligible to participate in the quality improvement system or when a parent decides that the rated providers are not suited to their family's needs or preferences. This is particularly important for geographic areas where an adequate supply of child care is lacking or when a parent has scheduling, transportation, or other issues that prevent the use of a preferred provider within the system.

In a similar manner, we propose adding paragraph (h) at § 98.30 to clarify that Lead Agencies may provide parents with information and incentives that encourage the selection of high quality child care without violating parental choice provisions. As discussed below, this proposed rule would require Lead Agencies to establish a system of quality indicators and to provide information about the quality of child care providers to parents receiving subsidies. Accordingly, this provision would allow Lead Agencies to adopt policies that incentivize parents to choose high quality providers as determined in a system of quality indicators. Lead Agencies may provide brochures or other products that encourage parents to select a high quality provider without violating parental choice provisions.

Parental Complaints (Section 98.32)

Hotline for parental complaints. Section 658E(c)(2)(C) of the CCDBG Act requires that a Lead Agency ''maintain a record of substantiated parental complaints and makes information regarding such parental complaints available to the public on request and provide a detailed description of how such record is maintained and is made available.'' Current language at § 98.32 mirrors the statutory requirement. We propose to add § 98.32(a) to require the Lead Agency to establish or designate a hotline for parents to submit complaints about child care providers. Paragraphs (a), (b), and (c) in the current regulations have been re-designated as paragraphs (b), (c), and (d) but otherwise remain unchanged.

States vary in how they meet the current requirement to keep a record of and make public substantiated parental complaints. In the FY 2012–2013 CCDF plans, 10 States reported having a toll-free hotline for parents to submit child care-related complaints, including 9

States with dedicated child care hotlines and one State that utilizes the child abuse and neglect hotline. An additional 16 States list public toll-free numbers on their Web sites for parents to contact the child care office. Not all are listed as hotlines, but may still provide parents with a means for submitting complaints and seeking additional information.

The Department of Defense (DoD) military child care program also runs a national parental complaint hotline. The Military Child Care Act of 1989 (P.L. 101–189) required the creation of a national 24 hour toll-free hotline that allows parents to submit complaints about military child care centers anonymously. DoD has found the hotline to be important tool in engaging parents in child care. In addition, complaints received through the hotline have helped DoD identify problematic child care programs. For example, information that was submitted through the hotline led to an investigation and the closure of some child care facilities in the early 1990s. (Campbell, N., Appelbaum, J., Martinson, K., Martin, E., Be All That We Can Be: Lessons from the Military for Improving Our Nation's Child Care System, 2000)

Lead Agencies have flexibility to design the hotline to fit the needs of the families they serve. Lead Agencies may also choose to work with other agencies to adapt existing hotlines, such as modifying hotlines used to report child abuse and neglect to include an option for reporting child care complaints.

We strongly encourage the Lead Agency to widely publicize the child care hotline number, and to consider requiring child care providers to publicly post the hotline number in their center or family child care home to increase parental awareness. Other areas for posting may be the Web site proposed at § 98.33(a), the child care resource and referral network and Web site, and consumer education materials, including the proposed consumer statement for parents receiving subsidy at § 98.33(c).

Lead Agencies are encouraged to establish a toll-free hotline that includes multilingual options and has a TTY/TDD option to ensure it is accessible to those with hearing impairments. It is important that all parents have access to the hotline, regardless of ability to pay for the call, English proficiency, or hearing ability. As with the military child care hotline, we recommend that the hotline be available for 24 hours a day. Allowing parents to submit complaints any time of the day gives them the flexibility to call when their work schedule allows. Parents should also have the option to report complaints anonymously. For some parents, reporting these issues may be difficult, and the option of anonymity may make them more comfortable with coming forward with a complaint.

Finally, Lead Agencies should have a complaint response plan in place that includes time frames for following up on a complaint depending on the urgency or severity of the parent's concern. This plan relates to the proposed regulatory change at § 98.41(d)(3) that Lead Agencies must do an unannounced, on-site monitoring visit in response to receipt of a complaint pertaining to the health and safety of children in the care of a provider serving children receiving CCDF subsidies.

Consumer Education (Section 98.33)

Section 658E(c)(2)(D) of the CCDBG Act requires that Lead Agencies ''collect and disseminate to parents of eligible children and the general public, consumer education information that will promote informed child care services.'' Current language at § 98.33(a) requires that, at a minimum, consumer education information should be provided about: (1) Full range of providers available; and (2) health and safety requirements.

Consumer education activities carried out across the country vary by who provides the information, how the information is presented, and what information is included. In some States and Territories, consumer education materials and referrals to providers are offered by the Lead Agency or by State or local TANF offices. In others, resource and referral agencies provide information about child care choices and referrals to all types of child care providers. The way information is presented to parents includes checklists, brochures, telephone hotlines, and in-person meetings. In addition to providing materials and referrals to parents receiving child care assistance, Lead Agencies engage in a variety of consumer education activities, including public awareness campaigns, planning or implementing quality rating systems, and translating outreach and education materials into other languages.

Current regulations do not specify mechanisms for how Lead Agencies should collect and disseminate consumer education information to the public or to parents determined eligible for CCDF assistance. In many States, the process for applying for and receiving a subsidy is disconnected from consumer education services offered by the Lead Agency, leaving the parent to find out what child care options are available to them with little to no information about the quality of that care. Additionally, it is unclear what information, if any, is provided to parents regarding the child care provider they choose, such as licensing or other regulatory requirements met by the provider.

We are proposing several changes to § 98.33 describing consumer education activities. Since the proposed regulatory changes at this section are extensive, the first part of this section briefly summarizes all of the proposed regulatory changes, and then each change is explained in more detail in the discussion that follows.

- *Consumer education Web site.* We propose to add language to § 98.33(a) requiring Lead Agencies to collect and disseminate, through a user-friendly, easy-to-understand Web site and other means identified by the Lead Agency, consumer education information that will promote informed child care choices. At § 98.33(a)(1) current regulations require that consumer education information, at a minimum, include information about the full range of available providers. We propose to add new provisions to require that the Lead Agency make available on a Web site: (i) Provider-specific information about any health and safety, licensing or regulatory requirements met by the provider, including the date the provider was last inspected; (ii) any history of violations of these requirements; and (iii) any compliance actions taken. We also propose to revise § 98.33(a)(2) to require that Lead Agencies include on the Web site a description of health and safety and licensing or regulatory requirements for child care providers and processes for ensuring that child care providers meet those requirements. The description must include information about the background check process for providers, as well as any other individuals in the child care setting (as applicable), and what offenses preclude a provider from serving children.
- *Transparent system of quality indicators.* We propose to add new paragraph § 98.33(b) to require Lead Agencies to collect and disseminate consumer education through a transparent system of quality indicators, such as a quality rating and improvement system or other system established by the Lead Agency, to provide parents with a way to differentiate between the quality of different child care providers in their communities using a rating or other descriptive method. The system must: (1) Include provider-specific information about the quality of child

care; (2) Describe the standards used to assess the quality of child care; (3) Take into account teaching staff qualifications and/or competencies, learning environment, and curricula and activities; and (4) Disseminate provider-specific quality information, if available, through the Web site described in § 98.33(a), or through an alternate mechanism which the Lead Agency shall describe in the CCDF Plan, including a description of how the mechanism makes the system of quality indicators transparent.

• *Providing consumer education to families receiving subsidies.* Finally, we propose to add a new paragraph § 98.33(c) requiring that Lead Agencies provide information to parents receiving subsidies about the child care providers available to them, as described in paragraphs (a) and (b), and specific information about the child care provider they choose, including health and safety requirements met by the provider described at § 98.41(a), licensing and regulatory requirements met by the provider, any voluntary quality standards met by the provider, and any history of violations of licensing or health and safety requirements.

Paragraphs (b) and (c) in the current regulations have been re-designated as paragraphs (d) and (e) but otherwise remain unchanged.

Consumer education Web site. We propose amending paragraph (a) of § 98.33 to require Lead Agencies to post provider-specific information to a user-friendly, easy-to-understand Web site as part of its consumer education activities. Making available a Web site with accessible, easy-to-understand basic information about how child care is regulated and monitored, as well as regulatory requirements met by individual child care providers can improve transparency and greatly reduce burden on families. Parents often lack information regarding specific requirements that individual child care providers may or may not meet. Some States and Territories currently post lists of licensed providers online, but not all licensing information is available, such as history of licensing violations or when the provider was last inspected or monitored. Limiting access to this information creates a burden for parents, makes it difficult for them to make informed decisions about their child's care, and denies parents information about providers' ability to protect their children's health and safety.

We believe parents choosing a provider should be able to do so with access to any information that the State may have about that provider, including information about, the date the provider was last inspected, licensing violations or compliance actions taken by the State against a provider. Similarly, if a provider is exempt from State licensing or regulatory requirements then the parent should be given that information and provided an explanation about why the provider is not required to be licensed.

The Web site also should make it easy for parents to know how the State regulates child care providers and what requirements they must meet. This must include a description of health and safety and licensing or regulatory requirements and processes for monitoring providers. We strongly recommend that the State tell parents how frequently providers are monitored or maximum amount of time between inspections. The Web site also must include a plain language description of the provider background check process including what the State looks at as part of a comprehensive background check (i.e., use of fingerprints for checks of Federal and State criminal history, as well as check of child abuse and neglect and sex offender registries). There must be information about what types of offenses that could preclude a provider from serving children, as well as offenses that would not disqualify a provider. We recommend using accessible terms when referring to criminal offenses, such as child abuse and violent crime, since terms like felony and misdemeanors might not have meaning for parents.

In order for a Web site to be a useful tool for parents, it should be easy to navigate, searchable, and in plain language. We recommend that Web sites be comprehensive, including a detailed profile for each licensed provider, which may include the provider's contact information, enrollment capacity, years in operation, languages spoken, etc . . . In addition, parents should be able to use many search terms when deciding on a provider, including name, type of care, county, zip code, or school district. All relevant licensing information should also be available on one Web site. Lead Agencies have flexibility to determine how to present information regarding child care provider licensing violations and compliance actions taken. This includes determining the length of the history to be included for providers, distinguishing between the severities of different violations, or posting information about compliance action or fines only after the provider has exhausted their due process rights or waives their rights.

This proposed change is consistent with current practices in many States to increase availability of information about licensing process, standards and violations to parents and the general public. According to a preliminary analysis of the FY 2012–2013 CCDF Plans, at least 30 States and Territories make all licensing information available to parents and the public online. Ten States and Territories reported making at least some licensing information available on a public Web site or other online tool, such as a provider training registry.

Research suggests that online publishing of licensing violations and complaints impact both inspector and provider behavior. One study found that after inspection reports are posted online, there was an improvement in the quality of care, specifically the classroom environment and improved management at child care centers serving low-income children. (Witte, A. & Queralt, M., What Happens When Child Care Inspections and Complaints Are Made Available on the Internet? NBER Working Paper No. 10227, 2004) Making provider compliance information widely available on a dedicated Web site allows all parents to make informed choices, and for purposes of the CCDF subsidy program, is key to ensuring that parental choice is meaningful for families receiving subsidies.

A transparent system of child care quality indicators. We propose to add new paragraph (b) at § 98.33 to require use of a transparent system of quality indicators, such as a quality rating and improvement system or other system established by the Lead Agency, to collect and disseminate consumer education information. As part of this proposed change, Lead Agencies would be required to implement a system that includes: Provider-specific information about the quality of child care; describes standards used to assess the quality of child care providers; takes into account teaching staff qualifications and/or competencies, learning environment, and curricula and activities; and disseminates provider-specific quality information through the Web site described above, or alternate mechanism established by the Lead Agency. This system would act as a basic tool that can be used not only to assess and collect quality information about specific child care providers, but also a straightforward way to provide parents with quality information and promote more informed child care choices. A system of quality indicators should include indicators which are appropriate to different types of

provider settings, including child care centers and family child care homes. Additionally, quality indicators should be appropriate for providers serving different age groups of children, including infants and toddlers, preschool, and school-age children.

In order for a transparent system of quality indicators to be useful, Lead Agencies must provide parents information that describes the standards used to assess the quality of child care providers, what the quality indicators mean, and if any providers are not covered in the system. In addition, the transparent system of quality indicators must take into account teaching staff qualifications and/or competencies, learning environments, and curricula and learning activities in child care settings. Teaching staff qualifications refer to specific education or training requirements attained by the teaching staff, program director, or family child care provider. Staff competencies reflect actual provider performance, typically measured with observational tools. Some research suggests that higher levels of education and credentials are related to better interactions between providers and the children in their care, leading to higher quality child care settings, when these training programs are informed by evidence and well-implemented. (Whitebook, M., Early Education Quality: Higher Teacher Qualifications for Better Learning Environments—A Review of the Literature, 2003; U.S. Department of Health and Human Services, National Institutes of Health, The NICHD Study of Early Child Care and Youth Development, 2006) Learning environments are the activities, practices, materials and provisions in the environment to promote children's optimal learning and development. The elements of a learning environment play an important role in determining the safety of a child's environment and the quality of a child's learning experience. Curricula and learning activities are the plan and activities used to help meet a child's developmental goals. ACF recommends curriculum indicators be linked with State early learning guidelines.

Finally, under proposed § 98.33(b)(3), Lead Agencies must disseminate the provider-specific quality information to the public, either through the Web site described at § 98.33(a), or, alternately, a Lead Agency may use another mechanism, such as dissemination through local resource and referral agencies or another approach, that the Lead Agency will describe in its CCDF Plan; the Plan will include a description of how the mechanism makes the system of quality indicators transparent.

We strongly encourage Lead Agencies to meet the requirement proposed in paragraph § 98.33(b) through the implementation of a Quality Rating and Improvement System (QRIS). QRIS provides a framework for organizing, guiding, and gauging the progress of early care and education quality initiatives at the State, Territorial, or Tribal level. In many cases, QRIS is the foundation of a cross-sector ECE system. States' leadership in creating and implementing QRIS has produced a more systemic approach to quality efforts and accountability. This move to a more systemic approach to improving child care quality also was reflected in the inclusion of a QRIS in the application for the Race to the Top-Early Learning Challenge (RTT–ELC) grant program.

As discussed earlier, more than half of the States have implemented QRIS as a framework for organizing and guiding the progress of early care and education quality initiatives and communicating the level of quality to parents. The rating structure of the QRIS typically uses a building block design, points, or some combination of the two to determine the rating earned by a provider. In a building block design, all of the standards in one level must be met in order to move to the next higher level. In a points system, points are earned for each standard and then are added together to determine the level. Each rating level includes a range of possible scores. These levels are then usually represented through symbols, such as one star, two stars, or three stars, providing an easy to understand means for parents to determine the quality of care available at a certain provider. Later in this rule we discuss proposed changes to § 98.51(a)(2) which describe activities to improve the quality of child care. We propose to add a description of a framework for organizing, guiding, and measuring progress of quality investments. A QRIS, or other system of quality improvement, is one key component of this larger framework and can help improve the ability to evaluate and communicate the quality of child care programs.

While ACF encourages all States to implement a systemic framework for evaluating, improving and communicating the level of quality in child care programs, we are not requiring Lead Agencies to implement a QRIS in order to meet the requirement to implement a transparent system of quality indicators. Lead Agencies have the flexibility to meet the requirement proposed at paragraph § 98.33(b)(3) by implementing, more limited, alternative systems of quality indicators. However, we recommend that these be an interim step for Lead Agencies on the path to developing a full QRIS. Over time, Lead Agencies are encouraged to work on linking their quality improvement initiatives and strategies, culminating in a comprehensive QRIS with adequate support for providers to attain higher levels of quality and transparency for parents and the community regarding the quality of child care.

Lead Agencies also could meet the new requirement for a transparent system of quality indicators by providing a profile or report card of information about the child care provider to parents that could include compliance with State licensing or health and safety requirements, information about ratios and group size, average teacher training or credentials, type of curriculum used, any private accreditations held, and presence of staff to work with young dual language learners or children with special needs. We encourage Lead Agencies to incorporate mandatory licensing requirements into a system of quality indicators, as a baseline of information for parents to use. For example, one State currently has a Licensed Plus option that designates providers who have met certain quality levels beyond that of the State's regular licensing program. By building on existing licensing structures, Lead Agencies may have an easier transition into a more sophisticated system that differentiates between indicators of quality. Lead Agencies should explain the licensing system to parents, as well as what a provider must do in order to receive a higher level license, and how violations of licensing standards are handled.

Another option for designing a transparent system of quality indicators to meet the new requirement at § 98.33(b), is to rely on accreditation programs to differentiate between quality of child care providers. The accreditation system may have different levels or steps in the process to indicate a progressive change in quality that would give a more useful picture of quality available to parents than if the system simply differentiates between accredited and not accredited. Lead Agencies that choose this type of system should provide information to parents about which type of accreditation options are available, what the accreditations mean, and what type of providers are eligible to participate. One limitation of this approach is that only a small proportion of child care providers are nationally accredited. To address this situation, many States

embed accreditation into a more widely-applicable set of quality indicators.

In designing a transparent system of quality indicators, we suggest considering the following key principles: Provide outreach to targeted audiences; ensure indicators are research-based and incorporate the use of validated observational tools when feasible and that assessments of quality include program standards that are developmentally appropriate for different age groups; incorporate feedback from child care providers and from parents and families; make linkages between consumer education and other family-specific issues such as care for children with special needs; engage community partners; and establish partnerships that build upon the strengths of resource and referral programs and public agencies that serve low-income parents.

Under the proposed change, each Lead Agency has the flexibility to develop a system of quality indicators, such as a QRIS, based on its specific needs. Lead Agencies may develop a system that is voluntary for child care providers to participate in or could choose to exempt certain providers, such as faith-based providers, from its system of quality indicators. A Lead Agency also could choose to incorporate licensing as part of the base level of indicators (e.g., some States automatically incorporate all licensed providers into their QRIS). We encourage Lead Agencies to establish a system of quality indicators that is inclusive of all types of providers, including family child care providers and providers serving school-age children.

We recognize that it takes time to build a comprehensive system that is inclusive of a large number of providers across a wide geographic area. However, in order for a system of quality indicators to be meaningful it should include as many providers as possible so that parents can benefit from having information about the quality of a wide range and variety of child care providers. While we are not mandating a specific approach or participation rate, the public needs contextual information regarding the extent of participation by providers in a system of quality indicators. For example, the Quality Performance Report, which has been implemented as an attachment to the CCDF Plan, asks States to track and report on the participation of providers in State QRIS.

Providing consumer education to families receiving subsidies. This discussion has focused on Lead Agency responsibilities for providing consumer education to the general public and all parents; however, we believe those families receiving subsidies deserve particular attention. We propose adding a new paragraph (c) to § 98.33 to require Lead Agencies to provide parents determined eligible for CCDF assistance with information about the child care provider options available to them, as described at paragraphs (a) and (b), and specific information on the child care provider they choose, including CCDF health and safety requirements met by the provider, any licensing and regulatory requirements met by the provider, any voluntary or State or locally mandated quality standards met by the provider, and any history of violations of health and safety, licensing or regulatory requirements.

Lead Agencies should also provide information necessary for parents to understand the components of a comprehensive criminal background check, as well as the types of findings that may preclude a provider from serving children receiving subsidies. In addition, if the parent chooses a provider that is legally-exempt from State regulatory requirements or exempt from CCDF health and safety requirements (e.g., relatives or in-home providers at Lead Agency option, as described later in this proposed rule), the Lead Agency or its designee should explain the exemption to the parent and the rationale for the exemption.

When providing this information, which is essentially a consumer statement for subsidy parents, a Lead Agency may provide that information using the Web site required by § 98.33(a) or through the alternative mechanism allowed by § 98.33(b). In such cases, the Lead Agency should ensure that parents have access to the internet or provide access on-site in the subsidy office. However, once a parent receiving a subsidy selects a particular provider, the Lead Agency must provide the health and safety and quality information about that specific provider, such as by providing a hard copy report or email (for parents with internet access and an email address) with a link to the specific information online.

We strongly encourage Lead Agencies to incorporate child care consumer education services directly into the intake and eligibility process for families applying for CCDF assistance to explain the full range of child care options and meaning of licensing violations and quality standards. Parents seeking subsidies should have access to information that the Lead Agency collects regarding the child care providers in their community, especially information about the quality of those child care providers. Parents of eligible children often lack the information necessary to make informed decisions about their child care arrangement. The child care market often faces the issue of information asymmetry, where parents may have difficulty accessing complete information about a particular provider without assistance. Low-income working families may face additional barriers when trying to find information about child care providers, such as limited access to the Internet, limited literacy skills, or limited English proficiency. Lead Agencies can play an important role in bridging the gap created by these barriers by providing information for families receiving CCDF subsidies to ensure the parent fully understands their child care options and feels comfortable in assessing the quality of providers.

Finally, ACF encourages Lead Agencies to provide parents receiving CCDF assistance with any updated information on the child care provider they select (or information about any new provider they may select if the child care provider changes), including notifying the parent of any violations incurred by the provider. These updates should be provided on a periodic basis, such as providing an update at the time of the family's next eligibility re-determination. We also encourage strong ties between the CCDF Lead Agency and the licensing agency to ensure that families are not referred to providers seriously out-of-compliance with health and safety requirements, and that placement and payment of subsidy does not continue where children's health and safety are at-risk.

The goal of all the proposed revisions at § 98.33 is to make the child care system as transparent as possible for parents and the public. In order to ensure a robust consumer education system, we are specifically seeking comment on the new proposals at § 98.33 and ask for feedback about areas that should be included in the system. We also ask for State, Tribal, and Territorial experiences with collecting and sharing child care provider information, including greater detail on what types of information from provider background checks are shared with parents seeking child care.

Subpart E—Program Operations (Child Care Services) Lead Agency and Provider Requirements

Subpart E of the regulations describes Lead Agency and provider requirements for compliance with applicable State and local regulatory and health and safety requirements. It also includes

provisions requiring the Lead Agency to establish a sliding fee scale that provides for cost sharing for families receiving assistance, to ensure that payment rates to providers serving children receiving subsidies ensure equal access to the child care market, and to establish priorities for child care services. We propose to make several changes to this subpart specifically regarding health and safety requirements, procedures for monitoring providers, sliding fee scales, and equal access provisions.

Compliance With Applicable State and Local Regulatory Requirements (Section 98.40)

Section 658E(c)(2)(E) of the CCDBG Act requires every Lead Agency to certify that it has in effect licensing requirements applicable to child care services within its jurisdiction. Correspondingly, § 98.40 of the regulations implements section 658E(c)(2)(E), and asks Lead Agencies to provide a description of licensing requirements for child care services and how they are effectively enforced. We propose to make one change in this section to add language at paragraph § 98.40(a)(2) requiring the Lead Agency to provide a description of any exemptions to licensing requirements and a rationale for such exemptions in the CCDF Plan.

According to the *2011 Child Care Licensing Study (*prepared by the National Child Care Information and Technical Assistance Center and the National Association for Regulatory Administration*),* half of the States have exemptions from licensing for child care centers. The most common licensing exemptions include: Facilities with the parents are on the premises (e.g. child care services in shopping malls or health clubs); facilities with a small number of children in care; facilities consisting of recreation programs, instructional classes, and/or club programs; and facilities with a small number of hours per day or week. Lead Agencies will now be asked in their CCDF Plan, as reflected in the proposed change at § 98.16(q), to describe their licensing exemptions and to explain the necessity of those exemptions. Asking States to provide a rationale can help ensure that exemptions are issued in a thoughtful, purposeful manner that keeps children safe. Information about licensing and regulatory exemptions should be made publicly available on the Lead Agency's Web site, pursuant to § 98.33(a).

Health and Safety Requirements (Section 98.41)

The CCDBG Act also includes a provision at 658E(c)(2)(F) to require that Lead Agencies establish health and safety requirements applicable to child care providers serving children supported by CCDF subsidies. Congress included this additional section, separate from the certification of State licensing requirements discussed above, to apply specifically to providers serving subsidized children and identified three categories required to be addressed as part of health and safety requirements: (1) Prevention and control of infectious diseases (including immunization); (2) building and physical premises safety; and (3) minimum health and safety training appropriate to the provider setting.

Existing CCDF regulations at § 98.41, implementing section 658E(c)(2)(F), elaborate on only one of these three categories describing requirements related to immunizations as part of prevention and control of infectious diseases. The regulations are silent as to what the language ''building and physical premises safety'' and ''minimum health and safety training'' actually means for providers serving subsidized children. We believe this has resulted in a lack of accountability in the use of Federal funds for child care subsidies despite the fact that the statute clearly intended to establish minimum standards. The changes described in this section of the proposed rule would provide further specificity regarding expectations for how Lead Agencies are to meet these requirements.

State child care licensing regulations and monitoring and enforcement policies help provide a baseline of protection for the health and safety of children in out-of-home care. However, States vary greatly in the extent to which they require different types of child care providers to meet licensing and regulatory requirements. According to the *2011 Child Care Licensing Study* (prepared by the National Child Care Information and Technical Assistance Center and the National Association for Regulatory Administration), every State licenses child care centers; however, 3 States do not license small family child care homes (defined in the study as one adult caring for a group of children in the provider's residence). Fifteen States require family child care homes to be licensed when they care for two or more children; 8 States require homes to be licensed when they care for three or more children; 11 States require homes to be licensed when they care for four or more children; and 14 States don't require homes to be licensed until they care for 5 children or more.

Recognizing that these exemptions may leave children unprotected, the RTT–ELC, administered by the Department of Education, established a competitive priority for State applicants that implemented a licensing and inspection system covering all programs that regularly care for two or more unrelated children for a fee in a provider setting.

There also is considerable variation among States in what they include in their child care licensing requirements. Some State licensing standards do not require providers to have pre-service training, such as in first-aid or CPR, or they do not require providers to undergo background checks before caring for children.

We believe revisions to this part are especially important because many child care providers serving children receiving CCDF subsidies either are not required to be licensed or have been exempted from licensing requirements by States, meaning that CCDF health and safety requirements are the primary, and in most cases, the only safeguard in place to protect those children—along with any other children the provider may be caring for. Approximately 10 percent of CCDF children are cared for by non-relatives in unregulated centers and homes.

When States exempt certain types of child care from licensing, the safety of children is left unmonitored and there can be a lack of accountability for children receiving CCDF subsidies. All too frequently, there are reports of child injury or death in child care homes or facilities not licensed or monitored by the State. A national study of child fatality rates in child care showed variation in fatality rates based on the strength of licensing requirements and suggested that licensing not only raises standards of quality, but serves as an important mechanism for identifying high-risk facilities that pose the greatest threat to child safety. (Dreby, J., Wrigley, J., *Fatalities and the Organization of Child Care in the United States, 1985–2003,* American Sociological Review, 2005) Additionally, child deaths at unlicensed child care homes or facilities have prompted some State legislatures to take action by passing laws to strengthen licensing requirements.

Because many child care providers may not fall under the purview of the State's licensing program, or licensing requirements themselves may not be rigorous, we believe it is important to provide additional detail in this section to ensure that all providers serving CCDF-subsidized children meet

minimum health and safety standards, whether or not they are licensed by the State (excepting relative providers and in-home providers that care for children in the child's home at the option of the Lead Agency, as discussed later in this proposed rule). Health and safety is the foundation of quality in child care and health promotion in child care settings can improve children's development. We believe the proposed changes will make significant strides in strengthening standards to ensure the basic safety, health, and well-being of children receiving a child care subsidy.

Our first proposed change to this section would amend the regulatory language at 98.41(a)(1)(i) to replace ''States and Territories'' with ''Lead Agencies'' to be inclusive of Tribes. When the 1998 Final Rule was issued, Tribes were exempt from this requirement because minimum tribal health and safety standards had not yet been developed and released by HHS at that time. However, minimum tribal standards have subsequently been developed and released, and the standards address immunization in a manner that is consistent with the requirements of this section. As a result, there is no longer a compelling reason to continue to exempt Tribes from this regulatory requirement.

Building and physical premises safety. Section 658E(c)(2)(F) of the CCDBG Act requires that Lead Agencies have in effect requirements designed to protect the health and safety of children that are applicable to providers serving children receiving subsidies which must include ''building and physical premises safety.'' However, the CCDBG Act and current regulations do not specify expectations for this requirement. We propose to amend § 98.41(a)(2) to describe minimum requirements for ''building and physical premises safety.'' The proposed change would specify that this requirement shall include:

i. Comprehensive background checks on child care providers that include use of fingerprints for State checks of criminal history records, use of fingerprints for checks of Federal Bureau of Investigation (FBI) criminal history records, clearance through the child abuse and neglect registry, if available, and clearance through sex offender registries, if available;

ii. Compliance with State and local fire, health, and building codes for child care, which must include ability to evacuate children in the case of an emergency. Compliance must be determined prior to child care providers serving children receiving assistance under this part; and

iii. Emergency preparedness and response planning, including provisions for evacuation and relocation, shelter-in-place, and family reunification.

Comprehensive criminal background checks. First, we believe the proposed change at § 98.41(a)(2)(i), to require comprehensive background checks, is a basic safeguard essential to minimize children's risk of abuse and neglect. This proposed change is consistent with a discussion in the preamble to the 1998 regulations which stated that, ''ACF considers [criminal background checks] to fall under the building and physical premises safety standard in the statute.'' (63 FR 39956) Chief among health and safety standards is that children are safe in the care of child care providers. Parents have the right to know that their child care providers and others who come into contact with children do not have a record of violent offenses, sex offenses, child abuse or neglect, and have not engaged in other behaviors that would disqualify them from caring for children. A GAO report issued in September 2011 found several cases in which individuals convicted of serious sex offenses had access to children in child care facilities as employees, because they were not subject to a criminal history check prior to employment. (GAO–11–757) This change also is consistent with other program policies such as Head Start, which requires all prospective Head Start and Early Head Start employees to receive a criminal background check.

According to a preliminary analysis of the FY 2012–2013 CCDF Plans, all States and Territories require that child care center staff undergo at least one type of criminal background check and approximately 40 require a fingerprint check. Fifty States and Territories require family child providers to have a criminal background check and approximately 36 require a fingerprint check. For some States and Territories, these requirements are currently limited to licensed providers rather than all providers that serve children receiving CCDF subsidies. Under this proposed rule, we would require that all providers serving CCDF-subsidized children (with the exception, at Lead Agency option, of relatives and providers in the child's own home) must undergo a comprehensive criminal background check that includes: (1) Use of fingerprints for State checks of criminal history records; (2) use of fingerprints for checks of Federal Bureau of Investigation (FBI) criminal history records; (3) clearance through the child abuse and neglect registry, if available; and (4) clearance through sex offender registries, if available. ACF recently published an Information Memorandum (CCDF–ACF–IM–2011–05) that provides further guidance and information regarding these four components of a comprehensive background check.

We are specifically seeking comments on whether requirements for a comprehensive criminal background check should also be applicable to other individuals in a child care center, such as food service and office personnel. In addition, we request comment on whether other individuals in a family child care home that provides services to children receiving CCDF subsidies should be required to undergo a background check, and at what age. Forty-three States require some type of background check of family members 18 years of age or older that reside in the family child care home. (*Leaving Child Care to Chance: NACCRRA's Ranking of State Standards and Oversight for Small Family Child Care Homes,* National Association of Child Care Resource and Referral Agencies, 2012)

Pre-inspections and ability to evacuate children. Secondly, we propose to add § 98.41(a)(2)(ii) requiring compliance with State and local applicable fire, health, and building codes, as part of the building and physical premises safety standard, including demonstration of the ability to evacuate children in the case of an emergency. Compliance must be determined before a provider serves a child care receiving a CCDF subsidy and phased in within an appropriate timeframe for providers currently caring for children. Building codes are designed to ensure that a building is safe for occupants and regular fire safety checks by trained officials can ensure that a child care facility or family child care home meets all applicable requirements as established by the State or locality.

According to the *2011 Child Care Licensing Study* (prepared by the National Center on Child Care Quality Improvement and the National Association of Regulatory Administrators), 39 States require fire, health, and building code inspections, also referred to as environmental inspections, for child care centers. In addition, many States conduct separate licensing inspections prior to issuing a license to a child care center. The study reports that 12 States require fire, health, and building code inspections for family child care providers. In addition, of the 42 States that license small family child care homes, 37 conduct an inspection before issuing a license to a family child care home.

Child care centers and family child care homes may be governed by

different fire, health, and building codes depending on the State or locality. Child care centers are a non-residential setting and serve more children and there may be more extensive fire, health and building codes in place for centers as opposed to family child care homes. The proposed requirement at § 98.41(a)(2)(ii) does not prescribe the fire, health, or building codes that should be applied to child care centers or family child care homes. Rather, Lead Agencies have the flexibility to determine the appropriate codes to apply to different providers.

We propose that Lead Agencies must take into account if the child care provider can evacuate children in the case of an emergency when determining whether a child care center or family child care home meets the building and physical premises safety standards. To ensure that children are in safe settings, Lead Agencies need to establish appropriate group sizes for child care providers that meet the health and safety needs of young children. Child-staff ratios should also be set such that providers can demonstrate the capacity to evacuate all of the children in their care in a timely manner. Currently, all States that license child care centers have requirements for child-staff ratios, and all States that license family child care homes have requirements about the maximum number of children (including infants, toddlers, preschool, and school-age children) that can be cared for by one adult provider. (*2011 Child Care Licensing Study,* National Center on Child Care Quality Improvement and National Association for Regulatory Administration, 2011)

One resource for determining the appropriate child-staff ratios and group sizes is NFPA 101: Life Safety Code from The National Fire Protection Association (NFPA) which recommends that small family child care homes with one provider serve no more than two children incapable of self-preservation. For large family child care homes, the NFPA recommends that no more than three children younger than two years of age be cared for where two staff members are caring for up to twelve children. (National Fire Protection Association. NFPA 101: Life Safety Code. 2009)

We are specifically seeking comments on the provision at 98.41(a)(2)(ii) requiring that health and safety inspections be completed prior to serving children receiving child care assistance. While we feel that requiring child care programs to meet State and local fire, health, and building codes prior to serving children is a crucial step in ensuring that the 1.6 million children served by CCDF are cared for in safe environments from day one, we recognize that this could create a burden for Lead Agencies, providers, and families. Additionally, we do not want to create additional barriers to parents finding care for their children because of delays in the availability of child care slots. We are also seeking comment about the process for inspecting programs that may already be serving children when this Final Rule is published.

Emergency preparedness and response planning. Third, consistent with the proposed changes at § 98.14, requiring Lead Agencies to coordinate with agencies responsible for emergency management and response when preparing the CCDF Plan, we propose adding § 98.41(a)(2)(iii) requiring Lead Agencies to include emergency preparedness and response planning requirements for child care providers serving children receiving CCDF subsidies. The importance of the need to improve emergency preparedness and response in child care was highlighted in an October 2010 report released by the National Commission on Children and Disasters (NCCD). The Commission was appointed by the President and Congress to conduct a comprehensive review of Federal disaster-related laws, regulations, programs, and policies to assess their responsiveness to the needs of children and make recommendations to close critical gaps. The Commission's report included two primary recommendations for child care: (1) To improve disaster preparedness capabilities for child care; and (2) to improve capacity to provide child care services in the immediate aftermath and recovery from a disaster. (*2010 Report to the President and Congress,* National Commission on Children and Disasters, p. 81, October 2010) Child care also has been recognized by the Federal Emergency Management Agency (FEMA) as an important part of disaster response (see FEMA Disaster Assistance Fact Sheet 9580.107, Public Assistance for Child Care Services, 2013).

This proposed change requires child care providers serving children supported by CCDF funds to appropriately plan for disasters and emergencies. Lead Agencies have flexibility to determine specific guidelines for what child care providers should include in emergency preparedness and response planning; however, planning must include provisions for evacuation and relocation, shelter-in-place, and family reunification. The National Resource Center for Health and Safety in Child Care and Early Education, funded by the Maternal and Child Health Bureau in HHS, publishes *Caring for Our Children: National Health and Safety Performance Standards: Guidelines for Out-of-Home Child Care, 2nd Edition.* This guidance includes recommended standards for written evacuation plans and drills, planning for care for children with special needs, and emergency procedures related to transportation and emergency contact information for parents. In addition, the National Association of Child Care Resource and Referral Agencies (NACCRRA) and Save the Children recently released a publication titled, *Protecting Children in Child Care During Emergencies: Recommended State and National Standards for Family Child Care Homes and Child Care Centers,* that includes recommended State regulatory and accreditation standards related to emergency preparedness for family child care homes and child care centers. Finally, ACF has published guidance for Lead Agencies to use for developing State-level emergency response plans for child care and resources for child care providers. These resources are available on our Web site at: *http://www.acf.hhs.gov/programs/occ/resource/child-care-resources-for-disasters-and-emergencies.*

Since all three of these building and physical premises safety requirements would apply to providers serving children receiving CCDF assistance, upon publication of a Final Rule, we are seeking comment as to what an appropriate phase-in or timeframe would be for ensuring that providers not meeting these requirements at that time are brought into compliance. We do not intend that these requirements cause disruption in the child care arrangements of children receiving subsidies, but expect that we would need to establish some reasonable period of time to ensure child care providers meet the conditions outlined at this section.

Minimum health and safety training. Adequate training in basic health and safety is essential to ensuring that the child care workforce is properly equipped to care for children receiving subsidies. The current regulations require minimum health and safety training, but do not define the requirement. Child care providers should have a firm grasp on essential health and safety areas prior to working with children so that they are fully prepared to meet the needs of all subsidy children from the very first professional interaction. Research has shown that caregivers who receive specialized training are better able to facilitate a positive learning

environment and tend to have children who exhibit fewer negative behaviors. (Fiene, R., *13 Indicators of Quality Child Care: Research Update,* Pennsylvania State University, National Resource Center for Health and Safety in Child Care, 2002) Given the breadth of health and safety issues related to young children, we believe it is important to establish a minimum baseline for pre-service and orientation training that applies uniformly across all providers serving children receiving CCDF subsidies. This proposed change will ensure that all child care providers responsible for the health and safety of children have received specific and basic training commensurate with their professional responsibilities.

We propose adding a list of minimum health and safety pre-service and orientation training, appropriate to the provider setting and ages of children served, at § 98.41(a)(3) to include the following: (i) First-aid and Cardiopulmonary Resuscitation (CPR); (ii) medication administration policies and practices; (iii) poison prevention and safety; (iv) safe sleep practices including Sudden Infant Death Syndrome (SIDS) prevention; (v) shaken baby syndrome and abusive head trauma prevention; (vi) age-appropriate nutrition, feeding, including support for breastfeeding, and physical activity; (vii) procedures for preventing the spread of infectious disease, including sanitary methods and safe handling of foods; (viii) recognition and reporting of suspected child abuse and neglect; (ix) emergency preparedness planning and response procedures; (x) management of common childhood illnesses, including food intolerances and allergies; (xi) transportation and child passenger safety (if applicable); (xii) caring for children with special health care needs, mental health needs, and developmental disabilities in compliance with the Americans with Disabilities Act (ADA); and (xiii) child development, including knowledge of developmental stages and milestones of all developmental domains appropriate for the ages of children receiving services.

The proposed minimum requirements are based on health and safety training recommendations from *Caring for Our Children: National Health and Safety Performance Standards; Guidelines for Early Care and Education Programs, 3rd Edition.* The proposed list is focused on those items that we believe represent the most immediate needs related to basic health and safety for children receiving subsidies. However, Lead Agencies are encouraged to develop a comprehensive and robust training program that also covers additional areas related to program design, worker safety, and child developmental needs, using the *Caring for our Children* guidelines as best practices in the field. In addition, training requirements should be appropriate to the provider setting and ages of children served. For example, training on SIDS is only necessary if a program cares for infants. If providers are caring for children of different ages, training in first-aid and CPR should include elements which take into account that practices differ for infants versus school-age children.

We propose to include § 98.41(a)(3)(i), first-aid and CPR, in the list of health and safety training requirements because studies show that training in these areas is associated with higher quality of care. A study of providers in four mid-western States, who had completed CPR or first-aid training within the past two years, showed that the training was associated with higher quality scores from the Family Day Care Rating Scale (FDCRS) and Early Childhood Environment Rating Scale Revised (ECERS–R) in family child care homes and centers. (Raikes, H. et al., *Child Care Quality and Workforce Characteristics in Four Midwestern States,* Omaha, NE, Gallup Organization, 2003)

It is important that someone who is qualified to respond to common injuries and life-threatening emergencies be in attendance in a child care setting at all times. A staff member trained in pediatric first-aid, including pediatric CPR can reduce the potential for serious injury. It also important to be trained specifically in first-aid and CPR for young children because first aid in the child care setting requires a more child-specific approach and technique than adult-oriented first-aid generally offers. Training in basic first-aid and CPR for children also has been shown to reduce the number of accidental injuries in child care. (Ulione, M.S., *Health Promotion and Injury Prevention in a Child Development Center,* Journal of Pediatric Nursing, 1997)

According to the FY 2012–2013 CCDF Plans, approximately 42 State and Territories have CPR pre-service training requirements for child care centers and 43 State and Territories have first-aid pre-service training requirements. For family child care providers, 44 have CPR pre-service training requirements and 43 have first-aid pre-service training requirements. (Note, throughout this section we have cited information from the most recent CCDF Plans which indicate the number of States and Territories that have *pre-service* training requirements in the areas discussed, consistent with the proposed change at § 98.41(a)(3) discussed later in this proposed rule. However, the CCDF Plan also asks Lead Agencies to indicate whether they have ongoing training requirements in certain areas, and in nearly all of the areas cited a higher number of Lead Agencies indicated they require ongoing training. Ongoing training requires the provider to receive specific training on some regular established basis, rather than, prior to provision of services.)

We propose to include § 98.41(a)(3)(ii), medication administration policies and practices, in the list of health and safety training requirements. We believe it is important that any child care provider who administers medication receive standardized training that educates the provider about the necessary skills and competencies needed to do so safely. Increasing numbers of children entering child care take medications (*Caring for Our Children,* Section 3.6.3). Medication will only be effective if appropriately administered and can be extremely dangerous if administered inappropriately. According to the FY 2012–2013 CCDF Plans, approximately 23 States and Territories have a medication administration pre-service training requirement for child care centers. For family child care homes, 15 States and Territories require pre-service training in medication administration.

We propose to include § 98.41(a)(3)(iii), poison prevention and safety, in the list of health and safety training requirements, so that staff can respond appropriately and in a timely manner to exposure to poisonous or toxic elements. There are over two million human poison exposures reported to poison centers every year, and children less than six years of age account for over half of those potential poisonings. (*Caring for Our Children,* Section 5.2.9.1) The substances most commonly involved in poison exposures of children are cosmetics and personal care products, cleaning substances, and medications. Toxic substances, when ingested, inhaled, or in contact with skin, may react immediately or slowly, with serious symptoms occurring much later. It is important for the caregiver to have the appropriate training to recognize symptoms, alert the poison center, and undertake the appropriate response. This precaution is essential to the health and well-being of staff and children alike.

We currently do not have data in the CCDF Plans regarding the number of Lead Agencies requiring poison prevention and safety training.

However, according to the *2011 Child Care Licensing Study* (prepared by the National Child Care Information and Technical Assistance Center and the National Association for Regulatory Administration), 46 States require an inaccessibility of toxic substances policy as part of their licensing system for child care centers, and 45 have the same requirement for family child care providers.

We propose to include § 98.41(a)(3)(iv), safe sleep practices including Sudden Infant Death Syndrome (SIDS) prevention in the list of health and safety training requirements. Despite the decrease in deaths attributed to SIDS and the decreased frequency of prone or side infant sleep position over the past two decades, many child care providers continue to place infants to sleep in positions or environments that are not safe and potentially fatal. According to the American Association of Pediatrics Task Force on Infant Sleep Position and Sudden Infant Death Syndrome, nearly 20 percent of SIDS deaths occur while the infant is in the care of a non-parental caregiver, with 60 percent of these occurring in family child care, 20 percent in child care centers, and 20 percent in relative care. (American Academy of Pediatrics, *Reducing the Risk of SIDS in Child Care* training, 2008)

Infants who are cared for by adults other than their parent/guardian or primary caregiver/teacher are at increased risk for dying from SIDS. According to *Caring for Our Children,* recent research and demonstration projects have revealed that caregivers/teachers are often unaware of the dangers or risks associated with prone infant sleep positioning, and many believe that they are using the safest practices possible, even when they are not. (*Caring for Our Children,* Section 3.1.4) Training has been shown to lead to an increase in healthy sleep practices which can help decrease the instance of injury or death in child care. According to the FY 2012–2013 CCDF Plans, approximately 25 States and Territories have safe sleep and SIDS prevention pre-service training requirements for child care centers, and 25 States and Territories have SIDS prevention pre-service training requirements for family child care homes.

We propose to include § 98.41(a)(3)(v), shaken baby syndrome and abusive head trauma prevention, in the list of health and safety training requirements. Over the past several years there has been increasing recognition of shaken baby syndrome which is the occurrence of brain injury in young children under three years of age due to shaking. Even mild shaking can result in serious, permanent brain damage or death. It is important for child care providers to be educated about the risks of shaking and supports should be in place to provide child care providers with healthy coping mechanisms to deal with frustrations that may arise when working with a challenging child. Research has suggested that approximately 1,300 U.S. children experience severe or fatal head trauma from child abuse every year and that approximately 30 per 100,000 children under age 1 suffered inflicted brain injuries (*www.dontshake.org*). It is important that child care providers are properly trained in healthy practices and how to prevent trauma from unsafe treatment of children.

We propose to add § 98.41(a)(3)(vi), age-appropriate nutrition, feeding, including support for breastfeeding, and physical activity, in the list of health and safety training requirements. Over the past three decades, childhood obesity rates in America have tripled, and today, nearly one in three children in America are overweight or obese. The persistence of childhood obesity can lead to significant health problems including diabetes, heart disease, high blood pressure, cancer, and asthma. (Let's Move! Child Care, *Learn the Facts,* 2010) Educating caregivers on appropriate nutrition and physical activity is essential to provide young children with a healthy environment to prevent long-term negative health implications. According to the FY 2012–2013 CCDF Plans, 19 States and Territories have a nutrition pre-service training requirement for child care centers, and 15 States and Territories require pre-service training in this area for family child care homes.

In May 2010, the White House Task Force on Childhood Obesity reported that physical activity assists children in obtaining and improving fine and gross motor skill development, coordination, balance and control, hand-eye coordination, strength, dexterity, and flexibility—all of which are necessary for children to reach developmental milestones. In addition, daily physical activity provides numerous health benefits including improved fitness and cardiovascular health, healthy bone development, improved sleep, and improved mood and sense of well-being. Daily physical activity is an important part of preventing excessive weight gain and childhood obesity. Early childhood years, in particular, are crucial for obesity prevention due to the timing of the development of fat tissue, which typically occurs from ages 3 to 7. During these preschool years, children's body mass index (BMI) typically reaches its lowest point and then increases gradually through adolescence and most of adulthood. However, if this BMI increase begins before ages 4 to 6, research has suggested that children face a greater risk of obesity in adulthood. (White House Task Force on Obesity, *Report to the President,* 2010)

Nutrition and age-appropriate feeding is important to ensure that children receive the proper nutritional content to provide for healthy development. This is of particular importance when working with families who may be facing nutritional challenges in the home as well. Eating well is equally important for the healthy development of young children, and research has shown that public programs can improve the nutritional quality of the food, as children who receive food through government-regulated programs (e.g., the U.S. Department of Agriculture Child and Adult Care Food Program) eat healthier than those bringing food from home. (White House Task Force, 2010) Age-appropriate feeding in particular is important to avoid potential health hazard (e.g. choking and allergies), particularly when introducing solid foods to young children. Age-appropriate feeding also means encouraging, providing arrangement for, and supporting breastfeeding in the child care environment.

We propose to include § 98.41(a)(3)(vii), procedures for preventing the spread of infectious disease, including sanitary methods and safe handling of foods, in the list of health and safety training requirements. Attendance at a child care facility may expose a child to the risk of acquiring infectious diseases. Staff members face challenges in terms of enforcing recommended hygiene measures including hand hygiene, maintenance of proper environmental sanitation, food safety, and the proper inclusion or exclusion due to illness for both children and staff. Training in such procedures for preventing and managing the spread of infectious disease will help mitigate the effects of an illness in the child care setting and protect children, staff, and families from unnecessary exposure. According to the FY 2012–2013 CCDF Plans, approximately 22 States and Territories have a pre-service training requirement on preventing the spread of infectious disease for its child care centers, and 20 States and Territories pre-service training in this area for family child care providers.

We propose to include § 98.41(a)(3)(viii), recognition and

reporting of suspected child abuse and neglect, in the list of health and safety training requirements. It is important for child care providers to be trained in child abuse and neglect prevention in order to be able to recognize the manifestations of child maltreatment. While child care providers are not expected to diagnose or investigate child abuse and neglect, it is important that they be aware of common physical and emotional signs and symptoms of child maltreatment. All States have laws mandating the reporting of child abuse and neglect to child protection agencies and/or the police. While the laws about when and to whom to report may vary by State, child care providers are often considered mandatory reporters of child abuse and neglect and therefore responsible for notifying the proper authorities in accordance with their State's child abuse reporting laws. Child care providers should use child abuse and neglect training to educate and establish child abuse and neglect prevention and recognition measures for children, providers, and parents. According to the FY 2012–2013 CCDF Plans, approximately 31 States and Territories have a pre-service training requirement on mandatory reporting of suspected abuse or neglect for child care centers, and 25 States and Territories require pre-service training in this area for family child care providers.

We propose to include § 98.41(a)(3)(ix), emergency preparedness planning and response procedures, in the list of health and safety training requirements. This is consistent with the earlier discussion in this proposed rule highlighting the importance of emergency preparedness and response planning for child care providers. These new requirements would ensure providers are trained on procedures and practices included in emergency preparedness and response plans. Given the extreme vulnerability of young children, it is important that providers be prepared to follow the necessary evacuation, shelter-in-place or re-location procedures, including emergency response practices for children with special needs, family reunification, and procedures related to transportation and accessing emergency contact information for parents. According to the FY 2012–2013 CCDF Plans, approximately 29 States and Territories have emergency preparedness and response training requirements for child care centers, and 22 States and Territories require training in this area for family child care providers. We note that Lead Agencies have flexibility to determine if health and safety training proposed in this section should occur pre-service or as part of orientation. In the case of emergency preparedness and response, it may be more appropriate for the provider to receive this training as part of orientation since emergency procedures are often site-specific.

We propose to include § 98.41(a)(3)(x), management of common childhood illnesses, including food intolerances and allergies, in the list of health and safety training requirements. Management of common childhood illnesses is essential to safeguarding the spread of illness throughout child care settings. Caregivers/teachers should be knowledgeable about infectious disease in order to recognize and properly contain the spread of illness among children, staff, and the greater community. Since young children are particularly susceptible to illness, the proper management of the child care environment through hygiene and sanitation trainings can drastically reduce the spread of common childhood illnesses. Similarly, proper feeding practices can prevent health problems for children with food intolerances and allergies.

We propose to include § 98.41(a)(3)(xi), transportation and child passenger safety, in the list of health and safety training requirements. We recognize that not all child care providers provide transportation services, so we have added ''if applicable.'' For child care providers that do provide transportation, we believe it is important that the provider is properly trained in age and size-appropriate child restraint practices for car safety seats and seatbelts. Additionally, child passenger safety training should include awareness of the incidence of death and injury associated with forgetting or leaving children unattended in a vehicle.

We propose to include § 98.41(a)(3)(xii), caring for children with special health care needs, mental health needs, and developmental disabilities, in the list of health and safety training requirements. In order to provide appropriate services, providers should be trained on caring for children with special health care needs, mental health needs, and developmental disabilities in compliance with the American with Disabilities Act (ADA) (42 U.S.C. 12101, *et seq.*) and other relevant Federal laws. (*Caring for Our Children,* Section 8.2.0.2) This is important to ensure that all children are included in all activities possible unless a specific medical contraindication exists. The goal is to provide fully integrated care to the extent feasible given each child's limitations. Federal and State laws do not permit discrimination on the basis of disability per the ADA.

Training to support a developmentally appropriate and inclusive environment is crucial because studies have found the following benefits of inclusive child care: Children with special needs develop increased social skills and self-esteem; families of children with special needs gain social support and develop more positive attitudes about their child; children and families without special needs become more understanding and accepting of differences and disabilities; caregivers/teachers learn from working with children, families, and service providers and develop skills in individualizing care for all children. A basic understanding of developmental disabilities and special care requirements of any child in care is a fundamental part of any orientation for new employees. Staff should obtain appropriate training in order to include children with special needs, such as children with severe disabilities and children with special health care needs such as chronic illnesses, into child care settings. These may include technology-dependent children and children with serious and severe chronic medical problems.

Finally, we propose to add § 98.41(a)(3)(xiii) child development, including knowledge of the stages and milestones of all developmental domains for the ages of children enrolled in the facility, in the list of health and safety training requirements. In addition to being integral to professional development, child development is an essential component for the health and safety of children, both in and outside the child care setting. From a protection standpoint, research has shown that improving parental understanding of child development reduces the incidence of child abuse and neglect cases. (Daro, D. and McCurdy, K., ''Preventing Child Abuse and neglect: Programmatic Interventions,'' Child Welfare, 1994); (*Reppucci, N., Britner, P., and Woodard, J., Preventing Child Abuse and Neglect Through Parent Education, 1997*) Child care providers should be knowledgeable of the important developmental milestones to support the healthy development of children in their care, but also so they can be a resource for parents and provide valuable parent education. Child abuse is often a result of frustration, which can be exacerbated by an improper understanding of a child's capabilities. Knowledge of

developmental stages and milestones minimizes this frustration and reduces the odds of child abuse and neglect by establishing more reasonable and appropriate expectations for children.

Child development training is also an important component of health and safety because it equips child care providers with the information necessary to recognize any significant developmental delays such as autism spectrum disorders, motor delays, or other conditions. Early detection and intervention, access to the appropriate developmental screenings, and referrals to the appropriate services provides a safeguard against avoidable developmental delays. According to *Caring for Our Children,* 70 percent of children with developmental disabilities and mental health problems are not identified until school entry. The report identifies child care professionals as playing an important role in early detection due to their daily interaction with children and families and their knowledge in child development principles and milestones. (*Caring for Our Children,* Section 2.1.1.4) Child development training must address all developmental domains, including social and emotional, physical, and cognitive domains. This comprehensive training will ensure that providers are able to recognize and provide appropriate services or referrals in all developmental areas, such as mental health services for children who are experiencing trauma or stress.

Pre-service or orientation training. In this proposed rule at § 98.41(a)(3) we also have added language to specify that the health and safety training requirements described above, proposed in paragraphs (a)(3)(i)–(xii,) should be met during *pre-service or orientation* training. We believe it is important that child care providers be well-prepared and have a firm grasp on basic health and safety issues prior to serving children receiving subsidies. Many Lead Agencies have already established pre-service training requirements for child care providers serving children receiving subsidies, which generally differ for child care center staff and family child care homes, as shown in the discussion above using data from the most recent CCDF Plans. These requirements may include a minimum number of training hours prior to employment through participation in workshops, meetings, or one-to-one consultation, and a minimum number of ongoing hours of training. Lead Agencies often allow requirements to be satisfied through completion of a certification course or vocational or occupational education program. In addition, while the proposed regulatory requirements focus on pre-service or orientation training, we strongly encourage Lead Agencies to establish requirements for ongoing training as well. Requiring periodic training on an ongoing basis will ensure that providers retain their knowledge and skills over time and are updated on the most current practices and information to ensure children's health and safety.

We are specifically seeking comment on whether regulatory changes should include a minimum number of pre-service training hours and ongoing hours of training in these areas. *Caring for our Children* guidelines recommend at least 30 hours of initial pre-service training for child care staff, at least 30 hours during the first year, and at least 24 hours per year of continuing education and professional development thereafter. (*Caring for our Children,* Section 1.4.1.1 and 1.4.4.1) We also request comment on whether the Final Rule should specify a format for the training and whether the training requirements should be linked to measures of accountability, such as continuing education credits, to ensure that ongoing training requirements lead to a progression or advancement in a provider's knowledge base.

We recognize that it may not be possible for child care providers serving subsidized children to meet all the listed minimum health and safety training requirements prior to the first day of service. Therefore, we are allowing Lead Agencies to require the training prior to the provider's start of service (i.e., pre-service) or during the initial service period (i.e., orientation). We are leaving it to the Lead Agency's discretion to specifically define ''pre-service'' and ''orientation'', which may include stipulations that the training be completed within the first weeks or month of providing child care services to children receiving CCDF assistance. Lead Agencies should also offer a grace period to providers who are already serving children receiving CCDF assistance to minimize disruptions to child care arrangements for children currently enrolled with a provider and receiving subsidies. A significant number of the proposed training requirements in this section are already being met by many child care providers that are subject to Lead Agency licensing or regulatory requirements. Additionally, many of the areas included in the proposed new requirements are readily available through on-line trainings, which should minimize burden on Lead Agencies.

Monitoring. The CCDBG Act at 658E(c)(2)(G) requires Lead Agencies to certify that procedures are in effect to ensure that child care providers serving children receiving CCDF subsidies comply with all applicable State and local health and safety requirements, including those described at § 98.41(a). Currently, § 98.41(d) of the regulations incorporates this language but does not provide further clarification of this requirement. The regulation as written states that ''Each Lead Agency shall certify that procedures are in effect to ensure that child care providers of services for which assistance is provided under this part, within the area served by the Lead Agency, comply with all applicable State, local, or Tribal health and safety requirements. . . .'' There is no further definition as to what procedures are appropriate for the Lead Agency to employ to meet this certification requirement or specific mention of monitoring as a key component to ensure child care providers comply with health and safety requirements.

We propose to amend § 98.41(d) to require that Lead Agencies procedures must include unannounced on-site monitoring and to add § 98.41(d)(1) to require that all providers serving children receiving CCDF subsidies must be subject to on-site monitoring, including unannounced visits. We propose to add § 98.41(d)(2) stating that the Lead Agency may not solely rely on child care provider self-certification of compliance with health and safety requirements included in paragraph (a) without documentation or other verification that requirements have been met. Finally, we propose to add § 98.41(d)(3) to require that Lead Agency monitoring procedures must require an unannounced visit in response to receipt of a complaint pertaining to the health and safety of children in the care of a provider serving children receiving CCDF subsidies.

These changes would add much needed clarity to the current regulations, which is especially important given the new proposed health and safety requirements at § 98.41(a), discussed above. CCDF requires Lead Agencies to provide assurances that providers caring for subsidized children, including providers that are not otherwise regulated or licensed, meet minimum health and safety requirements. We believe it makes sense also to articulate expectations for how compliance with those requirements should be monitored.

There is currently significant variation across States regarding the nature and intensity of on-site monitoring and unannounced visits, with a variation in the frequency of monitoring. According to a preliminary analysis of the 2012–2013 CCDF Plans, all 56 Lead Agencies currently have some unannounced visit component in place for licensed centers and 47 of the Lead Agencies currently have unannounced visits for licensed family child care providers. However, only 13 Lead Agencies indicate use of unannounced visits for license-exempt CCDF child care providers. ACF believes the use of unannounced visits more effectively influences provider behavior because the possibility of an unannounced visit may compel providers to maintain compliance with basic requirements.

The proposed change requires that all providers serving children receiving subsidies be subject to on-site unannounced monitoring. The Lead Agency may choose to inform providers before monitoring staff depart for unannounced visits that involve significant travel time, such as those in rural areas, to avoid staff visits when the provider or children are not present. A Lead Agency's on-site monitoring practices must require both regulated and unregulated family child care homes and centers that provide care to children receiving CCDF subsidies to be inspected. Further, Lead Agencies may not limit on-site monitoring solely to licensed or regulated providers if unregulated providers also are providing services to children receiving CCDF assistance, and Lead Agencies must conduct unannounced visits. Note that, pursuant to 98.41(e) and discussed later in this proposed rule, the Lead Agency may choose to exempt relative and in-home child care providers from monitoring requirements.

In recognition of resource constraints, we recommend, that Lead Agencies ensure child care providers caring for children receiving a subsidy receive an initial on-site monitoring visit and at least one annual unannounced on-site monitoring visit. We recognize that on-site monitoring requires adequate licensing and monitoring staff and other resources. Therefore, we are specifically requesting public comment on this recommendation and whether it should become a requirement and welcome input as to alternative monitoring frequencies.

ACF encourages Lead Agencies to consider the use of differential monitoring as a method for determining the use or frequency of on-site, unannounced monitoring based on an assessment of the child care provider's past level of compliance with health and safety requirements or with information received that could indicate violations. This allows Lead Agencies to prioritize monitoring of providers that have previously been found out of compliance or that receive parental complaints. Lead Agencies should make data-driven decisions, and make any necessary adjustments to these policies regarding the frequency of on-site monitoring visits over time based on the latest available data. For example, if the Lead Agency finds widespread or significant compliance issues under its existing monitoring protocol, it should consider increasing the number and frequency of inspections for those providers.

According to the *2011 Child Care Licensing Study* (prepared by the National Child Care Information and Technical Assistance Center and the National Association for Regulatory Administration), 26 States use differential or risk-based monitoring for child care centers and 21 States use this method for family child care homes. If a risk-based methodology is not feasible, Lead Agencies might consider random sampling.

Lead Agencies are also encouraged to coordinate with other entities that already have inspection and on-site monitoring mechanisms in place such as licensing, QRIS, and Head Start. Another key partner in ensuring health, safety and quality in child care is the U.S. Department of Agriculture's Child and Adult Care Food Program (CACFP), which provides funding to State agencies to reimburse child care providers for meals and snacks served to participants. The program requires CACFP agencies to conduct periodic unannounced site visits to prevent and identify management deficiencies, fraud and abuse under the program as well as to improve program operations. As an example of interagency coordination, one State holds monthly meetings with representation from its licensing division, the CCDF Lead Agency, CACFP, and other public agencies with child care monitoring responsibilities. These divisions and agencies identify areas of overlap in monitoring and coordinate accordingly to leverage combined resources and minimize duplication of efforts.

Coordinating with other monitoring agencies can be beneficial to both agencies as they prevent unnecessary duplication of services. To the extent that other agencies provide an on-site monitoring component that may satisfy or partially satisfy the new monitoring requirement under this proposed rule, the Lead Agency is encouraged to pursue this type of collaboration. It is important that any such collaboration does not impose additional burden or inappropriate authority on any one partner or its participating agencies and that any shared costs are properly allocated between the partnering organizations benefiting.

The regulatory revision at 98.41(d)(2) is being proposed because we feel that self-certification without documentation or other verification is an insufficient certification of compliance with health and safety requirements and represents a significant risk for unsafe conditions that endanger children, as well as for fraudulent or improper payments. In some States, child care providers caring for subsidized children can self-certify that they have met minimum health and safety standards without additional verification, monitoring or enforcement of those provisions. According to the FY 2012–2013 CCDF Plans, 21 States and Territories allow license-exempt family child care providers to self-certify that they have met the CCDF health and safety requirements and 6 Lead Agencies allow license-exempt child care centers to self-certify. Under the proposed rule, Lead Agencies must, at a minimum, verify any self-certification claims with supporting documentation. Some examples of documentation include inspection by a Fire Marshall, a current CPR certificate, certificates demonstrating completion of training hours, or confirmation of completion of on-line training.

Finally, the proposed regulation at 98.41(d)(3) provides that Lead Agency monitoring procedures must require an unannounced visit in response to receipt of a complaint pertaining to the health and safety of children in the care of a provider serving children receiving CCDF subsidies. We believe that it is incumbent upon a Lead Agency to investigate complaints related to possible health and safety violations for child care providers serving CCDF children and that it is reasonable to require that a complaint should automatically trigger an unannounced visit to the provider.

Finally, we propose at 98.41(d)(4) that Lead Agencies establish procedures that require child care providers that care for children receiving CCDF subsidies to report to a designated State, territorial, or tribal entity any serious injuries or deaths of children occurring in child care. We strongly recommend that States, Territories, and Tribes extend this requirement to all child care providers, including those not serving CCDF children. According to the *2011 Child Care Licensing Study,* 34 States

require child care centers to report all serious injuries that occur to children in programs, and 33 States require deaths that occur to children in programs to be reported. For family child care, 31 States require reporting of all serious injuries and 25 States require reporting of child deaths. Therefore, this requirement is in line with current State practice, and provides an important tool for States in monitoring the health and safety of child care providers. The information collected from these providers should be used to inform the proposed assessment of child injuries and deaths in child care as required at § 98.16(v)(2).

In-home and relative providers. Regulations at § 98.41(e) currently allow Lead Agencies to exempt relative caregivers, including grandparents, great grandparents, siblings (if such providers live in a separate residence), and aunts or uncles from health and safety and monitoring requirements described in this section. We propose to add language at § 98.41(e) to expand the Lead Agency's flexibility to also exempt in-home child care providers (i.e., an individual who provides child care services in the child's own home). Accordingly, at the Lead Agency's option, they may choose to exempt relative-caregivers and in-home caregivers from some or all of their health and safety training requirements and monitoring procedures. If the Lead Agency chooses to exempt either of these categories of providers, the Lead Agency must provide a description and justification in the CCDF Plan of requirements, if any, that apply to these providers. We believe this additional flexibility is important because we recognize that some of the proposed requirements, such as compliance with building, health, and fire codes, emergency preparedness and response planning, and unannounced on-site monitoring may not be appropriate for that type of care setting. However, we do not intend for in-home providers serving children receiving subsidies to meet *no* minimum standards. Lead Agencies should think carefully about what types of health and safety requirements should apply to in-home providers such as criminal background checks and minimum health and safety training, in a similar manner that is done when considering which of the requirements should apply to relative caregivers.

Sliding Fee Scales (Section 98.42)

CCDF regulations at § 98.42(c) currently state that ''Lead Agencies may waive contributions from families whose incomes are at or below the poverty level for a family of the same size.'' We propose amending this section so that Lead Agencies can waive contributions from families ''meeting criteria established by the Lead Agency.'' Lead Agencies have often requested more flexibility to waive co-payments beyond just those families at or below the poverty level. This change would increase flexibility to determine waiver criteria that the Lead Agency believes will best serve subsidy families. For example, a Lead Agency could use this flexibility to target particularly vulnerable populations, such as homeless families or migrant workers, or to better align services for children dually funded through both CCDF and Head Start. While we are allowing Lead Agencies to define criteria for waiving co-payments, the criteria must be described and approved in the CCDF Plan pursuant to the proposed change at § 98.16(k). Lead Agencies may not use this revision as an authority to eliminate the co-payment requirement for all families receiving CCDF assistance. We continue to expect that Lead Agencies will have co-payment requirements for a substantial number of families receiving CCDF subsidies.

Finally, we are also proposing to add paragraph § 98.42(d) to provide that Lead Agencies may not use cost or price of care or subsidy payment rate as a factor in setting co-payment amounts, but may use quality of care. This corrects a contradiction between the 1992 and 1998 preamble discussions. The 1992 preamble stated that ''Grantees may take into account the cost of care in establishing a fee scale,'' (57 FR 34380), while the 1998 preamble states that ''As was stated in the preamble to the regulations published on August 4, 1992, basing fees on the cost or category of care is not allowed.'' (63 FR 39960) This proposed change will correct this discrepancy by clearly stating that Lead Agencies may not use cost or price of care when setting their co-pay amounts, which could violate the statutory requirements to preserve equal access and parental choice.

Equal Access (Section 98.43)

Section 658E(c)(4) of the CCDBG Act requires the CCDF Plan to provide assurances that payment rates for CCDF subsidies are sufficient to ensure equal access for eligible children to comparable child care services that are provided to children whose parents are not eligible to receive child care assistance. The statute also requires the CCDF Plan to provide a summary of the facts on which the Lead Agency relied to determine that payment rates are sufficient to ensure equal access. The existing regulation at § 98.43(b) requires a Lead Agency to show that it considered the following three key elements in determining that its child care program provides equal access for eligible families to child care services: (1) Choice of the full range of categories and types of providers; (2) adequate payment rates, based on a local market rate survey conducted no earlier than two years prior to the effective date of the current Plan; and (3) affordable copayments. The proposed rule largely maintains these three key elements at § 98.43(b)(2), but proposes some revisions regarding payment rates and the market rate survey.

First, for purposes of clarity, we propose to replace the term *market rate survey* with the term *valid* local *market price study* in paragraph § 98.43(b)(2). This is not a substantive change, but rather a change in terminology that more accurately reflects the scope and nature of the requirement. As in the past, the purpose of the market price study is to ensure that payment rates are established within the context of market conditions so that the rates are sufficient to provide equal access to child care services in the open market. We propose to use the term *price* rather than *rate* since § 98.43(b)(2) requires the Lead Agency to systematically collect information about the prices (not rates) charged in the market by child care providers. Once a Lead Agency gathers and analyzes this price information, it is used to help determine the rates paid by the Lead Agency to providers that serve children who receive CCDF. The change in terminology in the regulatory language more clearly distinguishes between the initial collection of price data, and the subsequent analysis and setting of payment rates. We also propose to use the term *study* rather than *survey* since Lead Agencies have the flexibility to use data collection methodologies other than a survey. For example, Lead Agencies may use administrative data from resource and referral agencies or other sources.

We also propose to require that the market price study must be *valid*—meaning that it accurately reflects the prices charged for child care in the local community. If a market price study is not valid, it will provide misleading results that cannot serve as a sound basis for establishing payment rates to providers or for measuring the adequacy of the rates. A recent report funded by ACF using CCDF research dollars identified components of a valid market price study (Grobe, D., Weber, R., Davis, E., Kreader, L., and Pratt, C., *Study of Market Prices: Validating Child Care Market Rate Surveys,* 2008). Based

largely on this research, a market price study will be considered valid if it meets the following benchmarks:

- Includes the priced child care market. The study includes child care providers within the priced market (i.e., providers that charge parents a price established through an arm's length transaction). In an arm's length transaction, the parent and the provider do not have a prior relationship that is likely to affect the price charged. For this reason, some unregulated, license-exempt providers, particularly providers who are relatives or friends of the child's family, are generally not considered part of the priced child care market and therefore are not included in a market price study. These providers typically do not have an established price that they charge the public for services, and the amount that the provider charges is often affected by the relationship between the family and the provider. In addition, from a practical standpoint, many Lead Agencies are unable to identify a comprehensive universe of family, friend, and neighbor caregivers since these providers frequently are not included on lists maintained by licensing agencies, resource and referral agencies, or other sources. In the absence of findings from a market price study, Lead Agencies often use other facts to establish payment rates for providers outside of the priced market (e.g., family, friend, and neighbor providers); for example, many Lead Agencies set these payment rates as a percentage of the rates for providers in the priced market.
- Provides complete and current data. The study uses data sources (or combinations of sources) that fully capture the universe of providers in the priced child care market. The study should use lists or databases from multiple sources, including licensing, resource and referral, and the subsidy program, if necessary for completeness. In addition, the study should reflect up-to-date information for a specific time period (e.g., all of the prices in the study are collected within a three month time period). The existing regulation at § 98.43(b)(2) requires that the market price study be completed no earlier than two years prior to the effective date of the Plan, thereby ensuring that the study reflects recent prices. ACF expects a Lead Agency to use its *current* market study completed within the past two years, rather than an older study, when setting its payment rates, though the Lead Agency retains discretion on where to set payment levels as compared to the market study findings, provided that it meets the requirements for providing equal access at § 98.43.
- Represents geographic variation. The study includes providers from all geographic parts of the State, Territory, or Tribal Service Area. It should also collect and analyze data in a manner that links prices to local geographic areas. The existing regulation at § 98.43(b)(2) requires the market price study to be ''local'', meaning that it should measure differences in local child care markets.
- Uses rigorous data collection procedures. The study uses good data collection procedures, regardless of the method (mail, telephone, or web-based survey; administrative data). This includes a response from a high percentage of providers (65 percent or higher is desirable; below 50 percent is highly suspect).
- Analyzes data in a manner that captures market differences. The study should examine the price per child care slot, recognizing that all child care facilities should not be weighted equally because some serve more children than others. This approach best reflects the experience of families who are searching for child care. When analyzing data from a sample of providers, as opposed to the complete universe, the sample should be appropriately weighted so that the sample slots are treated proportionally to the overall sample frame. The study should collect and analyze price data separately for each age group and category of care to reflect market differences.

In addition, we propose regulatory revisions designed to promote alternative or additional methodologies to market price studies as a basis for setting rates. Specifically, under new § 98.43(b)(2)(ii) a Lead Agency may propose an alternative methodology, such as a model that estimates the cost of providing various levels of quality child care, in lieu of a market price study. The Lead Agency must receive advance ACF approval prior to substituting the methodology for a market price study. We also propose to add new § 98.43(b)(4) which requires the Lead Agency to provide any additional facts the Lead Agency considered in determining that its payment rates ensure equal access, such as information on the cost of providing quality child care. We encourage Lead Agencies to use the flexibility afforded them under the CCDF rules to adopt innovative approaches to setting subsidy payment rates in a way that also is linked to child care quality.

We are concerned that many Lead Agencies currently are setting payment rate ceilings that are inadequate to ensure equal access. The preamble to the 1998 Final Rule indicated that payments established at least at the 75th percentile of the market would be regarded as providing equal access (63 FR 39959). In order to provide access to the highest quality care, even higher payment rates may be necessary. However, the vast majority of States set rate ceilings that are below the 75th percentile, and in some cases significantly below that benchmark. This means that families are unable to access a significant portion of the child care market.

We recognize that Lead Agencies face resource constraints that limit their ability to increase payment rates, and we are not requiring an increase in payment rates through this proposed rule; however, we continue to be concerned about families' ability to access high quality care when rates are low. Many child care providers report that they are unable to set published prices that reflect the full cost of providing quality services because parents would be unable to pay these prices. (*Report of the Build Subsidized Child Care Rate Policy Task Force,* Pennsylvania Build Initiative, 2004) As a result, the published prices that are reflected in market price studies (and which are used as the basis for setting CCDF subsidy payment rates) are not always adequate to cover the providers' full costs, particularly for high quality care.

To address this situation, Lead Agencies could adopt new methodologies and approaches for setting payment rates. One approach is to conduct cost studies (in contrast to price studies) that document the full cost to providers of quality child care. Another method is to develop models that estimate the cost to providers at various levels of quality. We considered mandating new rate-setting approaches for all Lead Agencies through this proposed rule; however, we do not yet have sufficient State experience using alternative methods to mandate them at this time.

There is an urgent need for States to explore and document new rate-setting practices, and our intent is to spur innovation in this area. Therefore, we would like to solicit public comments on innovative rate setting approaches and possible new Federal requirements that would better ensure that subsidy rates provide equal access, as required by statute. In addition to providing a basis for setting subsidy payment rates, new methodologies may also help the State determine what level of financial supports and incentives, such as grants and bonuses, are necessary to support quality enhancements for providers (for

example, the level of support necessary to sustain providers at the top level of a QRIS or other system of quality indicators).

Because the market price study is a long-standing practice that can provide important contextual information for setting rates, we propose to require advance ACF approval before a Lead Agency replaces its market price study with an alternative methodology. After enactment of a Final Rule, ACF will provide additional guidance to Lead Agencies regarding the process for proposing an alternative methodology to be used in place of a market price study, and the specific criteria for ACF approval. To obtain approval, we anticipate that the Lead Agency will need to demonstrate how the alternative methodology provides a sound basis for setting payment rates. ACF approval will only be necessary if the Lead Agency plans to replace the market price study with an alternative methodology. Approval will not be required if the Lead Agency plans to implement both a market price survey and an additional methodology to inform rate-setting.

We also note that ACF has previously issued guidance (Program Instruction CCDF–ACF–PI–2009–02) that describes conditions under which Tribal and Territorial Lead Agencies may provide alternative documentation in lieu of conducting or using a market price study. Specifically, this includes circumstances where the Lead Agency funds direct services solely in settings outside the scope of a market price study. This guidance remains effective, and is not altered by this proposed rule.

We propose adding a new paragraph § 98.43(c) to clarify that a Lead Agency shall take into account the quality of child care when determining payment rates for child care providers. Higher quality care is often more expensive to provide, whether that is reflected in the price or not. Therefore, it is important for payment rates to consider quality in order to ensure that parents receiving CCDF subsidies have equal access to quality child care. Taken together, revised paragraph (b) and new paragraph (c) identify the key elements required for equal access—the full range of providers, affordable copayments, and adequate payment rates which take into account the quality of child care.

We recommend that Lead Agencies pay higher subsidy rates for higher quality care. The taxpaying public rightly expects the government to pay for results, and research shows that quality is a prerequisite for supporting children's learning and development through child care. By paying more for quality, Lead Agencies provide a financial incentive for providers to increase the quality of care. The higher rates also help give providers the necessary resources to pay for higher levels of compensation for child care professionals, as well as other components of quality care.

When determining the differential rate for higher quality, we encourage Lead Agencies to make certain that rates are sufficient to ensure access at the higher levels of quality. At the same time, a Lead Agency's base rates (i.e., before any quality incentives are included) must be sufficient for all children to access care that meets a baseline of quality and health and safety. In addition, higher subsidy rates alone may not be sufficient to promote quality, particularly for child care providers that serve only a limited number of children receiving CCDF assistance. We encourage Lead Agencies to use grants, contracts, training and scholarship opportunities and other forms of support to help providers increase their quality. Linking enhanced subsidy rates to higher quality is an important component of promoting quality when implemented in conjunction with other ongoing financial supports, assistance, and incentives. In the FY2012–2013 CCDF Plans, 32 States and Territories indicated that they provide tiered or differential rates for higher quality.

With regard to paying higher rates for quality, we note that, in the preamble to the 1998 Final Rule, we reminded Lead Agencies of the general principle that Federal subsidy funds cannot pay more for services than is charged to the general public for the same service (63 FR 39959). We would like to clarify, however, that Lead Agencies may pay amounts above the provider's private pay rate, as a quality bonus or incentive. Recognizing that private pay rates are often not sufficient to support high quality, many Lead Agencies have already implemented tiered reimbursement systems that support quality and produce the school readiness and success outcomes that children deserve. Lead Agencies may use CCDF quality dollars to recognize higher quality care, or to provide incentives to increase the availability of child care otherwise in short supply in the market. This can be achieved through provider bonuses or incentives that may be implemented through tiered or quality reimbursement systems or other mechanisms. These payments may exceed private pay rates if they are designed to reimburse providers for additional costs associated with offering higher quality care or types of care that are not produced in sufficient amounts by the market (e.g., non-standard hour care, care for children with special health care needs, etc. . . .). These bonuses or incentives may be provided in the form of an hourly, monthly or other augment to provider reimbursement for the care of an eligible child.

We also propose to make a technical correction at § 98.43(b)(3) to clarify the reference to how copayments are affordable as described at § 98.42. The previous language read in such a way as to suggest that § 98.42 described affordable copayments in reference to the sliding fee scale, when in fact it does not. Current paragraphs (c) through (e) would be re-designated as (d) through (f) but otherwise would be unchanged.

Subpart F—Use of Child Care and Development Funds

Subpart F of CCDF regulations establishes allowable uses of CCDF funds related to the provision of child care services, activities to improve the quality of child care, administrative costs, Matching fund requirements, restrictions on the use of funds, and cost allocation.

Child Care Services (Section 98.50)

We propose a technical change to § 98.50(a) which states that the Lead Agency shall spend a substantial portion of the funds remaining after applying provisions at (c), (d), and (e) of this section to provide child care services to low-income working families. Paragraphs (c), (d), and (e), respectively, require the Lead Agency to spend a minimum of 4 percent on activities to improve the quality of care, not more than 5 percent for administrative activities, and not less than 70 percent of the Mandatory and Matching funds to meet the needs of families receiving Temporary Assistance for Needy Families (TANF), families transitioning from TANF, and families at-risk of becoming dependent on TANF. We propose to specify that § 98.50(b) is describing use of funds for *direct* child care services. In the past, we have been asked to interpret whether this section would allow States to use a substantial portion of funds for activities other than direct services.

In accordance with the proposed change at § 98.30(a)(1) discussed earlier, we propose to add language to § 98.50(b)(3) of the regulations to clarify that child care services shall be provided using funding methods described at § 98.30 (i.e., using grants or contracts or certificates), which must include some use of grants or contracts for the provision of direct services, with

the extent of such services determined by the Lead Agency after consideration of the supply shortages described and other factors as determined by the Lead Agency. As discussed earlier, existing language at § 98.30 provides that parents must be offered a choice of a grant or contract ''if such services are available,'' or a certificate. This proposed change, in conjunction with the proposed change at § 98.30, is intended to promote the use of grants or contracts, along with certificates, as funding mechanisms for child care services. As noted earlier, the majority of children (approximately 90 percent) currently receiving child care subsidies are served through certificates. We recognize that there may be geographic areas or other circumstances where grants or contracts may not be a viable option to offer every parent applying for subsidies; therefore, we allow Lead Agencies to determine the extent to which grants or contracts are used based on supply shortages and other relevant factors. However, this proposed change would require Lead Agencies to employ some use of grants or contracts to provide child care services.

Grants or contracts should play a role in building the supply and availability of child care, particularly high quality care, in underserved areas and for underserved populations. For example, contracts can be used to fund programs to serve children with special needs, specific geographic areas, infants and toddlers, and school-age children. Grants or contracts may also be used to provide wrap-around services in Head Start and pre-kindergarten and to fund programs that provide comprehensive services. Another factor a Lead Agency may wish to consider in the use of grants or contracts might be the ability of the child care market to sustain high quality child care providers in certain localities or for specific populations.

Grants or contracts provide greater financial stability for child care providers by funding a specified number of slots even if individual children leave the program, whereas certificates are portable allowing parents to leave a given provider at any time. Child care providers that receive funding through certificates face a constant threat of losing funding and children. Without stable funding, it is difficult for providers to pay for the higher costs associated with providing high quality child care, most child care providers, especially those in low-income or rural areas, cannot afford the qualified staff, equipment, and facilities that are necessary to meet high quality program standards. With greater financial stability, providers may be more willing to provide higher cost care, such as for infants and toddlers, or to locate in low-income or rural communities. Finally, grants or contracts also can improve accountability and fiscal integrity by giving the Lead Agency more access to monitor child care provider's compliance with health and safety requirements and appropriate billing practices.

Activities To Improve the Quality of Child Care (98.51)

We propose making a technical change at § 98.51(a) by substituting ''from each fiscal year's allotment'' for ''for a fiscal year.'' The purpose for this change is to make clearer that the four percent minimum quality expenditure is calculated based on each fiscal year's allotment (rather than a fiscal year's expenditure) as Lead Agencies have multiple years to spend an entire CCDF allotment in accordance with the liquidation timeframes at § 98.60(d) and (e). The revision also is consistent with existing language at § 98.52(a) describing the five percent limitation on administrative costs.

Framework for quality improvement activities. Under Section 658G of the CCDBG Act and existing regulations at § 98.51(a)(1), Lead Agencies must use not less than 4 percent of the CCDF funds for activities that are designed to provide comprehensive consumer education to parents and the public, activities that increase parental choice, and activities designed to improve the quality and availability of child care, including resource and referral services. Lead Agencies have broad flexibility to determine what may constitute quality activities as long as those definitions fit within the broad statutory requirement.

Current regulations at § 98.51(a)(2) describe a list of potential activities which may be considered allowable in order to meet this minimum quality expenditure requirement. The current list of suggested activities includes: (i) Operating directly or providing financial assistance to organizations (including private non-profit organizations, public organizations, and units of general purpose local government) for the development, establishment, expansion, operation, and coordination of resource and referral programs specifically related to child care; (ii) Making grants or providing loans to child care providers to assist such providers in meeting applicable State, local, and tribal child care standards, including applicable health and safety requirements, pursuant to §§ 98.40 and 98.41; (iii) Improving the monitoring of compliance with, and enforcement of, applicable State, local, and tribal requirements pursuant to §§ 98.40 and 98.41; (iv) Providing training and technical assistance in areas appropriate to the provision of child care services, such as training in health and safety, nutrition, first-aid, the recognition of communicable diseases, child abuse detection and prevention, and care of children with special needs; (v) Improving salaries and other compensation (such as fringe benefits) for full-and part-time staff who provide child care services for which assistance is provided under this part; and (vi) and other activities that are consistent with the intent of this section.

This list of activities is based on specific activities formerly contained in the CCDBG Act of 1990 prior to its reauthorization in 1996, which were retained in the 1998 Final Rule. We believe this list includes worthwhile quality activities, but does not reflect the great progress that has been made in the last decade toward organizing quality activities into an intentional, systematic approach to helping child care programs meet higher standards and child care professionals advance in their skills and knowledge. Therefore, we propose to delete the current list of suggested quality improvement activities at § 98.51(a)(2) and insert the activities that follow: (We note that all of the previously listed activities are incorporated into this new framework, and the proposed revision should not be interpreted as an indication that the previously delineated activities are no longer allowable activities toward meeting the minimum quality expenditure requirement.)

As proposed, activities to improve the quality of child care services may include, but are not limited to, implementation of a systemic framework for organizing, guiding, and measuring progress of quality improvement activities that includes the following key components: (i) Activities to ensure the health and safety of children through licensing and health and safety standards pursuant to §§ 98.40 and 98.41; (ii) Establishment and implementation of age-appropriate learning and development guidelines for children of all ages, including infants, toddlers, and school-age children; (iii) Establishment and implementation of systems of quality improvement to evaluate, improve and communicate the level of quality of child care programs that may contain the following elements:

(A) Establishment of program standards to define expectations for quality and indicators of different levels

of quality appropriate to the provider setting;

(B) Provision of supports, training and technical assistance to assist child care programs in meeting child care quality improvement standards;

(C) Provision of financial incentives and monetary supports to assist child care programs in meeting child care quality improvement standards;

(D) Provision of quality assurance and monitoring to measure child care program quality over time; and

(E) Implementation of strategies for outreach and consumer education efforts to promote knowledge of child care quality improvement standards to child care programs and to provide parents, including parents receiving assistance under this part, with provider-specific information about the quality of child care provider options available to them and the child care provider they select consistent with § 98.33;

(iv) Implementation of professional development systems to ensure a well-qualified child care workforce that may contain the following elements:

(A) Establishment of core knowledge and competencies to define what the workforce should know (content) and be able to do (skills) in their role working with children and their families;

(B) Establishment of career pathways to define options and a sequence of qualifications and ongoing professional development opportunities;

(C) Conducting professional development assessments to build capacity of higher education systems and other training institutions to meet the diverse needs of the child care workforce and address the full range of development and needs of children;

(D) Provision of access to professional development to ensure practitioners are made aware of, and receive supports and assistance to utilize professional development opportunities;

(E) Provision of rewards or financial supports to practitioners for participating in and completing education or training and for increased compensation;

(v) Implementation of an infrastructure of support to build child care provider capacity to promote health through wellness, physical activity and nutrition programs, to serve children with special needs, dual language learners and other vulnerable children (e.g., children in the child welfare system and homeless children), to implement family engagement strategies;

(vi) Assessment and evaluation of the effectiveness of quality improvement activities; and

(vii) Any other activities consistent with the intent of this section.

This proposed change envisions a more comprehensive approach aimed at systems-level change by providing a framework Lead Agencies can use to determine whether CCDF-funded quality initiatives have actually made a measurable difference to improve the quality of care. The proposed change provides a list of suggested quality improvement activities that Lead Agencies may consider for purposes of meeting the minimum quality spending requirement. We are not proposing to limit Lead Agencies to only these activities or requiring that Lead Agencies use quality dollars for these purposes. However, we believe this framework will help promote strategic investments that are coordinated and planned to achieve goals more efficiently.

Nationally, there is an increased call for improvement in child care quality. The quality of child care across the country is uneven, and too often the quality is insufficient to promote children's growth and development. Research has shown that it is possible to improve the quality of child care, for example by increasing the caregiver to child ratios and supporting more qualified caregivers by helping them attain educational credentials and training. (NICHD Early Child Care Research Network, *Child Outcomes When Child Care Center Classes Meet Recommended Standards for Quality,* American Journal of Public Health, 1999) States, Territories, and Tribes have pioneered new pathways to excellence to help center and home-based providers move toward continuous quality improvement. Many Lead Agencies have used CCDF quality funds to build a strong child care infrastructure that is focused on ensuring child care providers are supporting children's learning and development to help them succeed in school and life. In FY 2011, States and Territories reported spending approximately $1 billion or 12 percent of CCDF expenditures on quality improvement activities. This exceeds the statutory quality spending requirement, demonstrating the commitment Lead Agencies have shown to improving child care quality. These quality investments reach millions of children not receiving CCDF subsidies across a wide array of settings in the child care market.

Health and safety and licensing standards. We propose to add new paragraph at § 98.51(a)(2)(i) to include compliance with health and safety standards pursuant to §§ 98.40 and 98.41 in the list of quality improvement activities. This consolidates some of the separate activities already currently listed at § 98.51(a)(2). This activity is of particular importance given the proposed changes we have discussed regarding minimum health and safety requirements for child care providers serving children receiving subsidies. Assisting providers in meeting these requirements and appropriately monitoring compliance is a fundamental quality improvement activity, as health and safety is the foundation of quality. For example, many QRIS tie eligibility to participate directly to licensing. Many Lead Agencies also report using CCDF quality funds to support monitoring of compliance with licensing and regulatory requirements, to support training for licensing staff, and funding data system automation.

Learning guidelines. We propose to add new paragraph 98.51(a)(2)(ii) to include establishment and implementation of age-appropriate learning guidelines or standards for children of all ages, including infants, toddlers, and school-age children in the list of quality improvement activities. Early learning guidelines (sometimes called early learning standards) describe what children need to know and be able to do and their disposition toward learning and can help Lead Agencies measure and promote the physical, cognitive, and social and emotional development of children. In the FY 2012–2013 CCDF Plans, 47 States and Territories indicated that they have developed early learning guidelines for infants and toddlers, 55 for three-to-five year olds, and 21 States and Territories have developed them for children five and older. Almost all States and Territories report aligning early learning guidelines with K–12 content standards or other content standards, such as the Head Start Child Development and Early Learning Framework or State or Territory pre-kindergarten expenditures. For school-aged children, Lead Agencies may use existing standards for K–12 education, or build on them to include other domains of development, such as social and emotional competencies. This proposed regulatory change formally encourages Lead Agencies to use CCDF quality funds to continue their efforts to implement early learning guidelines across the domains of early learning and development.

Systems of quality improvement. We propose to add new paragraph 98.51(a)(2)(iii) to include implementation of systems of quality improvement to evaluate, improve and communicate the level of quality of child care programs in the list of

suggested quality improvement activities. ACF encourages that the system contain the following five elements: (1) Program standards to define expectations for quality and quality indicators indicating different levels of quality; (2) supports, training and technical assistance to assist child care programs in meeting child care quality improvement standards; (3) financial incentives and monetary supports to assist child care programs in meeting child care quality improvement standards; (4) quality assurance and monitoring to measure child care program quality over time; and (5) strategies for outreach and consumer education efforts to promote knowledge of child care quality improvement standards to child care programs and to provide parents, including parents receiving assistance under this part, with information about the quality of child care provider options available to them, pursuant to § 98.33.

As discussed earlier, QRIS is one approach that has been gaining momentum as a key strategy for promoting child care quality and more informed child care choices throughout the country. Many States have found QRIS a useful mechanism for providing parents with tools and information to select high-quality care for their children, to provide incentives, resources and technical assistance to help programs attain higher levels of quality, and to improve cross-sector coordination within the early care and education system. The five content areas proposed in this section were included in the revisions to the FY 2012–2013 CCDF Plan and also align with the definition of a ''Tiered Quality Rating and Improvement System'' included in the Race to the Top Early Learning Challenge (RTT–ELC). ACF encourages Lead Agencies to implement QRIS that are applicable to all child care sectors and address the needs of all children, including children of all ages, families of all cultural-socio-economic backgrounds, and practitioners. We also encourage Lead Agencies to incorporate strategies for family engagement into their QRIS to enhance the capacity of families to support their children's education and development.

ACF's Child Care Technical Assistance Network has provided key resources to States and Territories regarding QRIS, including a *QRIS Resource Guide* and *a QRIS Cost-Estimation Tool.* In 2011–2012, ACF's National Center on Child Care Quality Improvement provided technical assistance related to QRIS to 32 States, responded to information requests from CCDF Administrators on QRIS, conducted regional roundtables to assist and inform State QRIS development, and participated and partnered in efforts to coordinate and connect QRIS technical assistance and research at the national level. Additionally, ACF's Office of Planning, Research and Evaluation (OPRE), released a Compendium of Quality Rating Systems and Evaluations providing information, analysis, and resources about quality rating systems for States and other key stakeholders.

A system of quality improvement, such as a QRIS, should include program standards that link to the other components of the quality framework. For example, the program standards should require child care providers to use curricula and learning activities that are based on the State's early learning guidelines, and should address the use of information about children's growth and development to improve services. The program standards should also address teacher qualifications and skills consistent with the State's professional development system.

Professional development systems. We propose to add new paragraph 98.51(a)(2)(iv) to include implementation of professional development systems in the list of quality improvement activities. We believe these activities are important to ensure a well-qualified child care workforce and propose that professional development systems contain the following five elements: (1) Core knowledge and competencies to define what the workforce should know (content) and be able to do (skills) in their role working with children and their families; (2) career pathways to define options and a sequence of qualifications and ongoing professional development opportunities; (3) professional development assessments to build capacity of higher education systems and other training institutions to meet the diverse needs of the child care workforce and address the full range of development and needs of children; (4) access to professional development to ensure practitioners are made aware of, and receive supports and assistance to utilize professional development opportunities; and (5) rewards or financial supports to practitioners for participating in and completing education or training and for increased compensation. The five components of a professional development system proposed in this section were included in the FY 2012–2013 CCDF Plan and also are reflected in the RTT–ELC focus on creating a strong early childhood workforce.

Responsive, well-qualified caregivers are the most important factor in children's development and learning in child care settings. In the FY 2012–2013 CCDF Plans, the majority of States and Territories indicated that they have implemented components of a professional development system, including core knowledge and competencies for practitioners and career pathways that define a sequence of qualifications related to professional development and experience. There are other areas where more progress is needed, such as providing sustained financial support on a periodic, predictable basis for high levels of training and education.

Professional development and workforce supports are needed to increase the stability of a child care workforce that experiences turnover rates of approximately 30 percent per year, a national average wage of $10.15 an hour and a decline in the number of teachers with college degrees. (National Association of Child Care Resource and Referral Agencies, *Child Care Workforce,* 2012) In May 2012, the Bureau of Labor Statistics data estimated there were 624,520 child care workers in the US. These numbers, however, only include professionals in licensed facilities. According to a study by the Center for the Child Care Workforce and Human Services Policy Center, there are an estimated 2.3 million paid child care providers working in varied settings including public and private, for-profit and nonprofit, faith-based, community-based, school-based, home-based, and employer-sponsored providers. Approximately 35 percent of child care workers are self-employed, with the majority of these workers serving as family child care providers. Of these 2.3 million paid child care providers, nearly half care for toddlers aged 19 through 36 months. (*Estimating the Size and Components of the U.S. Child Care Workforce and Caregiving Population,* Center for the Child Care Workforce and Human Services Policy Center, May 2002) There is little data available about the informal sector of child care, although it makes up a large number of child care providers in the U.S.

Because the professional development needs of child care providers can vary based on the ages of the children in a provider's care, Lead Agencies should ensure their professional development systems are applicable to all providers, including school-age practitioners, infant-toddler care providers, and family child care. For example, core knowledge and competencies and available trainings should be specific to

the needs of child care providers whether they work with infants and toddlers, preschool-age, or school-age children. Additionally, States may want to create credentials tailored to specific categories of practitioners, such as a school-age professional or youth development credential, or an infant and toddler credential.

All sectors of the early care and education field require a well-qualified workforce with opportunities for growth from entry level through master teacher, including the many additional roles in the child care system (e.g., consultants, technical assistance providers, trainers, and higher education faculty). Lack of access to professional development that leads to progressively higher levels of competency is a barrier to providing access to high-quality early childhood education for all children.

Infrastructure of support to build child care provider capacity. We propose to add new paragraph 98.51(a)(2)(v), to include implementation of an infrastructure of support to build child care provider capacity to deliver comprehensive services that meet the needs of children and families, including: promoting health and wellness; serving children with special needs, dual language learners and other vulnerable children (e.g., children in the child welfare system and homeless children); and implementing family engagement strategies. We believe it is important to dedicate resources towards building community-wide infrastructure for early care and afterschool programs to increase quality and provide comprehensive services. This infrastructure could include: coordinating referrals to health and social services; providing relevant training and professional development; supplying curricula, materials and resources; collecting and disseminating relevant data on the well-being of children and families to guide services; and including families and a broad range of community representatives in planning and leadership efforts.

Many States and localities have invested in infrastructure for early care and afterschool programs to increase their quality and provide comprehensive services. For example, one State contracts with programs that provide high quality early education and care services for homeless children. In addition to providing children a stable, nurturing and stimulating environment that meets the individual developmental, behavioral, and emotional needs, these programs offer services to parents like on-site GED classes, job skills training, and counseling and advocacy services.

Another example is a community-based organization that built a comprehensive system aimed at ensuring children are ready to succeed in school and helping families achieve economic success. The program collaborates with the local school district to provide education to three- and four-year olds with special needs. It also partners with family and children's services to provide family support, parent education, case management crisis intervention, and family counseling services. Lastly, it works with the local university to provide healthcare to enrolled children, their parents, and their siblings.

Family engagement is also an example of an approach for involving families in decisions about their children, services, and communities. It includes a wide array of activities, such as direct relationships with child care and other service providers, mutual support shared among parents, advocacy by parents on behalf of their families, decision-making and advisory roles in agencies, and leadership in the community. Lead Agencies should consider use of CCDF quality funds to encourage partnerships between child care providers and public, private, and grassroots organizations to implement parent and family engagement strategies. Local and community networks and infrastructure are strongest when built with input from engaged parents and other residents.

The *Strengthening Families* framework, developed by the Center for the Study of Social Policy, is a widely-used approach that gives child care and early education programs common-sense strategies to support vulnerable families. Many States and communities have employed the framework to anchor efforts to build comprehensive early childhood systems at State and local levels. The approach focuses on science-based parenting skills, children's life skills, and family life skills specifically designed to build protective factors that prevent abuse and neglect and promote family strength. Many States have incorporated the core concepts of Strengthening Families into child care staff training and professional development, as well as into quality standards for QRIS.

Assessment and evaluation of quality improvement activities. We propose to add new paragraph 98.51(a)(2)(vi) to include assessment and evaluation of the effectiveness of quality improvement activities in the list of suggested quality improvement activities. Lead Agencies are encouraged to evaluate and assess the success of their quality investments. A good evaluation design can provide information critical to improving a quality initiative at many points in the process, and increase the odds of its ultimate success. The importance of these activities is highlighted in a September 2002 GAO report that looks at evaluations of State quality initiatives. This report notes that the descriptive information collected from State-sponsored studies can provide reliable information required to address program design issues, as well as to assess program implementation, which can then be useful in planning more rigorous evaluations of program impacts. (GAO–02–897)

Lead Agencies with a QRIS or that plan to implement a QRIS are encouraged to use a QRIS validation study to assess whether rating components and summary ratings can be relied on as accurate indicators of quality. Validation is important because it promotes increased credibility and support for QRIS, as well as efficient use of limited quality improvement resources. Factors that Lead Agencies should consider when designing a QRIS validation study include the strength of evidence required to address research questions and program improvement inputs needed to inform program management, stage of QRIS development, available funding; and timeframe in which research questions must be answered. Similar to implementation of QRIS, States should also consider using CCDF quality funds to test the effectiveness or validate the different elements of their professional development system.

Paragraph § 98.51(a)(2)(vii), as re-designated, would continue to allow any activites consistent with the intent of this section. Paragraphs (b) and (c) of this section would remain unchanged.

We propose to add a new paragraph at § 98.51(d) to clarify that activities to improve the quality of child care are not restricted to children meeting eligibility requirements under § 98.20 or to the child care providers serving children receiving subsidies. Children or providers benefiting from Lead Agency quality improvement activities and investments are not required to meet applicable CCDF eligibility requirements at § 98.20. Thus, CCDF quality funds may be used to enhance the quality and increase the supply of child care for all families, including those who receive no direct assistance.

We propose to add a new paragraph at § 98.51(e) to codify longstanding ACF policy that targeted funds for quality improvement and other activities that

may be included in appropriations law may not count towards meeting the 4 percent minimum quality requirement, unless so specified by Congress. Since FY 2000, Congress has included language in annual appropriations legislation for CCDF discretionary funds requiring States and Territories to spend portions of their CCDF Discretionary Funds on specified activities, including: child care resource and referral and school-aged child care activities (this requirement also applies to Tribes); improving the quality of infant and toddler child care; and additional quality expansion activities intended to be in addition to the 4 percent requirement.

We propose to add a new paragraph at § 98.51(f) to require that Lead Agencies must include in the Plan a description of performance goals associated with expenditure of funds on activities to improve the quality of care and report annually on whether goals have been met, pursuant to quality performance report described at § 98.16(v). The CCDF Plan is a prospective document, but in many cases, Lead Agencies are primarily describing the child care system that is currently operating in the State or Territory. In keeping with our commitment to CCDF Lead Agency flexibility, we asked Lead Agencies to set goals for themselves for each upcoming biennium in the FY 2012–2013 Plans. We also asked Lead Agencies to tell us what performance measures they use to track progress on child care quality. This information will be a resource as we update national performance measures on child care quality. These self-reported goals and measures will guide ACF technical assistance and serve as the basis for reporting under the new CCDF Quality Performance Report.

Administrative Costs (Section 98.52)

Section 658E(c)(3) of the CCDF Act and regulations at § 98.52 prohibit Lead Agencies from spending more than 5 percent of CCDF funds for administrative activities, such as salaries and related costs of administrative staff and travel costs. Section 98.52 (b) specifically provides that this limitation applies only to States and Territories (Note that a 15 percent limitation applies to Tribes under § 98.83(g)). We propose to add a provision at § 98.52(d) to formally add a list of activities which should not be counted towards the 5 percent limitation on administrative activities. These include: (1) Establishment and maintenance of computerized child care information systems; (2) Establishing and operating a certificate program; (3) Eligibility determination; (4) Preparation/participation in judicial hearings; (5) Child care placement; (6) Recruitment, licensing, inspection of child care providers; (7) Training for Lead Agency or sub-recipient staff on billing and claims processes associated with the subsidy program; (8) Reviews and supervision of child care placements; (9) Activities associated with payment rate setting; (10) Resource and referral services; and (11) Training for child care staff. These activities were included in the preamble to the 1998 Final Rule, which stated that the Conference Agreement (H.R. Rep. 104–175 at 411) of PRWORA specified that these activities should not be considered administrative costs. (63 FR 39962) We propose to incorporate this list into the regulation itself for clarity and easy reference.

Administrative costs and sub-recipients. Current CCDF regulations at § 98.52(a) provides a listing of activities that may constitute administrative costs and defines administrative costs to include administrative services performed by grantees or sub-grantees or under agreements with third-parties. However, we have received questions from CCDF Lead Agencies to clarify whether activities performed through sub-recipients or contractors are subject to the 5 percent administrative cost limitation. Our interpretation is that sub-recipients (contractors or sub-grantees) that receive funds from the Lead Agency are not individually bound by this requirement. However, the Lead Agency continues to be responsible for ensuring that the program complies with all Federal requirements and is required to oversee the expenditures of funds by sub-recipients. As such, while we do not as a technical matter separately apply the administrative cap to funds provided to each sub-recipient, the Lead Agency continues to be responsible for ensuring that the total amount of CCDF funds expended on administrative activities—regardless of whether it is expended by the Lead Agency directly or via sub-grant, contract, or other mechanism does not exceed the administrative cost limitation. Therefore, we propose to add § 98.52(e) to clarify that if a Lead Agency enters into agreements with sub-recipients for operation of the CCDF program, the amount of the contract or grant attributable to administrative activities as described at § 98.52(a) shall be counted towards the administrative cost limit.

Determining whether a particular service or activity provided by a sub-recipient under a contract, sub-grant, or other mechanisms would count as an administrative activity towards the 5 percent administrative cost limitation depends on the function or nature of the contract/sub-grant/mechanism. If a Lead Agency provides a contract or sub-grant for direct services, the entire cost of the contract could potentially be counted as direct services if there is no countable administrative component. On the other hand, if the entire sub-grant or contract was administrative in nature (e.g., for payroll services for employees), then the entire cost of the contract would count towards the administrative cost cap. If a sub-grant/contract includes a mix of administrative and programmatic activities, the Lead Agency would need to develop a method for attributing an appropriate share of the sub-grant/contract costs to administrative costs.

Restrictions on Use of Funds (Section 98.54)

Current CCDF regulations at § 98.54(b)(1) stipulate that for States and local agencies, no funds shall be expanded for the purchase or improvement of land or for the purchase, construction, or permanent improvement of any building or facility. However, funds may be expended for minor remodeling, and for upgrading child care facilities to assure that providers meet State and local child care standards, including applicable health and safety requirements. This rule does not apply to Tribal Lead Agencies, which may request approval to use CCDF funds for construction and major renovation of child care facilities (§ 98.84).

Under current regulations at § 98.2 major renovation is defined as (1) structural changes to the foundation, roof, floor, exterior, or load-bearing walls of a facility, or the extension of a facility to increase its floor area; or (2) extensive alternation of a facility such as to significantly change its function and purpose, even if such renovation does not include any structural change. We propose to modify § 98.54(b) to include the following language: Improvements or upgrades to a facility that are not specified under the definitions of construction or major renovation at § 98.2 may be considered minor remodeling and are, therefore, allowable. The preamble to the 1998 Final Rule included a discussion regarding minor remodeling and stated that, ''. . . rather than create a separate definition for minor remodeling State Lead Agencies may assume that an improvement or upgrade to a facility which is not specified under the definition of major renovation adopted by this rule may, by default, be

considered a minor renovation and, therefore is allowable under the Act.'' (63 FR 39940) This proposed change formally incorporates this policy into regulatory language.

Subpart G—Financial Management

The focus of Subpart G is to ensure proper financial management of the CCDF program, both at the Federal level by HHS and the Lead Agency level. The proposed changes to this section include increasing the amount of CCDF funds the Secretary may set-aside for technical assistance, incorporating targeted funds that have been included in appropriations language, but are not in the current regulations, and inclusion of the details of required financial reporting by Lead Agencies. Lastly, we propose clarifications regarding obligations and reallotment of matching funds.

Availability of Funds (Section 98.60)

Technical assistance. Sections 658(a)(3) and (b)(1) of the CCDBG Act authorize the Secretary to provide technical assistance to help States carry out the requirements of these rules, as well as requiring the Secretary to ''review and monitor State compliance'' with the statute and the Plan approved by HHS. Under current regulation at § 98.60(b)(1), the Secretary may withhold one quarter of one percent of a fiscal year's appropriation for technical assistance. We propose amending paragraph (b) to allow the Secretary to withhold up to ½ of 1 percent of CCDF funds for technical assistance.

The increased set-aside for technical assistance and monitoring will allow ACF to invest in efforts to improve program integrity by providing increased technical assistance to States on reducing waste, fraud, and abuse and improving the quality of care. This training and technical assistance involves assessing Lead Agency needs, identifying innovations in child care administration, and promoting the dissemination and replication of solutions to the challenges that Lead Agencies and local child care programs face. The support provided by ACF and our technical assistance providers helps States, Territories, Tribes and local communities build integrated child care systems that enable parents to work and promote the health and development of children. We believe increasing the set-aside for technical assistance is necessary for ACF to meet its responsibility to support Lead Agencies as they begin to improve health and safety standards, implement a transparent system of quality indicators, and invest in improving access to high quality child care.

Currently, ACF funds the Child Care Technical Assistance Network (CCTAN) to provide training and technical assistance to CCDF Lead Agencies. The CCTAN includes the National Center on Child Care Quality Improvement, the National Center on Child Care Professional Development Systems and Workforce Initiatives, and the National Center on Child Care Subsidy Innovation and Accountability. In addition to these Centers, a National Center on Tribal Child Care Implementation and Innovation, a National Center on Child Care Data and Technology, and a Network of State Child Care Systems Specialists provide TA that meets the individual needs of States, Territories, and Tribes. The CCTAN supports CCDF grantees in their efforts to improve the quality of early care and education and school-age care and helps the States, Territories, and Tribes reach their CCDF Plan goals. The new resources made available under this proposed rule would build on these efforts and allow increased assistance to Lead Agencies administering CCDF.

Over the past several years there has been a heightened focus on program integrity in child care, Head Start and other ACF programs. Recent investigations into CCDF programs have brought the program integrity of several States into question. For example, a GAO investigation found that five test States included in the GAO investigation ''lacked controls over child care assistance application and billing processes for unregulated child care providers, leaving the program vulnerable to fraud and abuse.'' (GAO–10–1062) We believe it is necessary to increase the resources available for technical assistance in order to strengthen program integrity by ensuring that CCDF dollars are used to provide child care to eligible families and to make investments in improving the quality of child care programs, and are not lost to fraud or improper payments. See the discussion in Subpart J for more information on monitoring and oversight.

Obligations. We propose to add a paragraph at § 98.60(d)(7) to clarify that the transfer of funds from a Lead Agency to a non-governmental third party or sub-recipient counts as an obligation, even when these funds will be used for issuing child care certificates. Some Lead Agencies contract with local units of government or non-governmental third parties, such as Child Care Resource and Referral Agencies (CCR&Rs), to administer their CCDF programs. The functions included in these contracts could include eligibility determination, subsidy authorization, and provider payments. The contracting of some of these duties to a third party has led to many policy questions as to whether CCDF funds that are used by non-governmental third parties to administer certificate programs are considered obligated at the time the sub-grant or contract is executed between the Lead Agency and the third party pursuant to current regulation at § 98.60(d)(5), or rather at the time the voucher or certificate is issued to a family pursuant to current regulation at § 98.60(d)(6).

The preamble to the August 4, 1992 CCDBG Regulations (57 FR 34395) helps clarify the intent of § 98.60(d). It states, ''The requirement that State and Territorial grantees obligate their funds [within obligation timeframes] applies only to the State or Territorial grantee. The requirement does not extend to the Grantee's sub-grantees or contractors unless State or local laws or procedures require obligation in the same fiscal year.'' It follows that, in the absence of State or local laws or procedure to the contrary, § 98.60(d)(6) would not apply when the issuance of a voucher or certificate is administered by a non-governmental third party because the funds used to issue the vouchers or certificates would have already been obligated by the Lead Agency. Based on this language, we have interpreted the obligation to take place at the time of contract execution between the Lead Agency and the third party. The addition of proposed paragraph (d)(7) simply codifies current ACF policy, and does not change existing obligation and liquidation requirements. Note that a local office of the Lead Agency, and certain other entities specified in regulation at § 98.60(d)(5) are not considered third parties.

Finally, we propose to make a technical change at § 98.60(h) to eliminate a reference to [§ 98.51(a)(2)(ii)] of the regulation which would otherwise becomes obsolete since this proposed rule proposes to delete it. This technical change does not change the meaning or the substance of paragraph (h), which specifies that repayment of loans made to child care providers as part of a quality improvement activity may be made in cash or in services provided in-kind.

Allotments From Discretionary Funds (Section 98.61)

Targeted funds. We propose to add paragraph § 98.61(f) to reference funds targeted through annual appropriations law. Since FY 2000, annual appropriations law has required the use

of specified amounts of CCDF funds for targeted purposes (i.e., quality, infant and toddler quality, school-age care and resource and referral). This proposed addition is for clarification so that the regulations will provide a complete picture of CCDF funding parameters. New paragraph (f) provides that Lead Agencies shall expend any funds set-aside for targeted activities as directed in appropriations law.

Audits and Financial Reporting (Section 98.65)

We propose revising § 98.65(g), which currently provides that the Secretary shall require financial reports as necessary, to specify that States must submit quarterly expenditure reports for each fiscal year. Currently, States and Territories file quarterly expenditure reports (ACF–696); however, the current regulations do not describe this reporting in detail. Under proposed paragraph (h), States and Territories will be required to include the following information on expenditures of CCDF grant funds, including Discretionary (which includes any reallotted funds and funds transferred from the TANF block grant), Mandatory, and Matching funds; and State Matching and Maintenance-of-Effort (MOE) funds: (1) Child care administration; (2) Quality activities excluding targeted funds; (3) Targeted funds identified in appropriations law; (4) Direct services; (5) Non-direct services including: a. Systems, b. Certificate program cost/eligibility determination, c. All other non-direct services; and (6) Such other information as specified by the Secretary.

We propose adding greater specificity to the regulation in light of the important role expenditure data play in ensuring compliance with the four percent quality expenditure requirement at § 98.51(a), administrative cost cap at § 98.52(a), and obligation and liquidation deadlines at § 98.60(d). Additionally, expenditure data provide us with important details about how Lead Agencies are spending both their Federal and State CCDF funds, including what proportion of funds are being spent on direct services to families or how much has been invested in quality activities. These reporting requirements do not create an additional burden on Lead Agencies because we are simply updating the regulations to reflect current expenditure reporting processes.

Tribal financial reporting. We propose to add paragraph (i) at § 98.65 requiring Tribal Lead Agencies to submit annual expenditure reports to the Secretary (ACF–696T). As with State and Territorial grantees, these expenditure reports help us to ensure that tribal grantees comply with obligation and liquidation deadlines at § 98.60(e), the fifteen percent administrative cap at § 98.83(g), and the four percent quality expenditure requirement at § 98.51(a). This reporting requirement is current practice and does not create an additional reporting burden on tribal grantees.

Program Integrity. We propose to add a new section § 98.68 Program Integrity—to include requirements that Lead Agencies have effective procedures and practices that ensure integrity and accountability in the CCDF program. These proposed changes formalize changes made to the CCDF Plan which require Lead Agencies to report in these areas. The Plan now includes questions on internal controls, monitoring sub-recipients, identifying fraud and errors, methods of investigation and collection of identified fraud, and sanctions for clients and providers who engage in fraud. ACF has been working with State, Territorial and Tribal CCDF Lead Agencies to strengthen program integrity to ensure that funds are maximized to benefit eligible children and families. For example, ACF issued a Program Instruction (CCDF–ACF–PI–2010–06) that provides stronger policy guidance on preventing waste, fraud, and abuse and has worked with States to conduct case record reviews to reduce administrative errors. The requirements proposed in this section build on these efforts and are designed to reduce errors in payment and minimize waste, fraud and abuse to ensure that funds are being used for allowable program purposes and for eligible beneficiaries.

At § 98.68(a) we propose to require Lead Agency internal controls to include processes to ensure sound fiscal management, processes to identify areas of risk, and regular evaluation of internal control activities. Examples of internal controls include practices that identify and prevent errors associated with recipient eligibility and provider payment such as: checks and balances that ensure accuracy and adherence to procedures; automated checks for red flags or warning signs; and established protocols and procedures to ensure consistency and accountability. The *Grantee Internal Control Self Assessment Instrument is available as a resource for* assisting Lead Agencies in assessing how well their policies and procedures meet the CCDF regulatory requirements for supporting program integrity and financial accountability.

At § 98.68(b) we propose to require Lead Agencies to have processes in place to identify fraud and other program violations associated with recipient eligibility and provider payment. These processes may include, but are not limited to, record matching and database linkages, review of attendance and billing records, quality control or quality assurance reviews, and staff training on monitoring and audit processes. Lead Agencies may wish to use unique identifiers to crosscheck information provided by parents and providers across State and national data systems. For example, income reported on the application for child care assistance may be checked with State quarterly wage databases or other benefit programs (i.e., SNAP, TANF, or Medicaid). Many such data systems can be structured to automatically flag potential improper payments. States should also provide training to caseworkers responsible for eligibility determination and redetermination and make efforts to simplify forms.

At § 98.68(c) we propose to require Lead Agencies to have procedures in place for documenting and verifying that children meet eligibility criteria at the time of eligibility determination. Lead Agencies are responsible for ensuring that all children served in CCDF are eligible at the time of eligibility determination or re-determination and receiving care from eligible child care providers. Lead Agencies should, at a minimum, verify and maintain documentation of the child's age, family income, and require proof that parents are engaged in eligible activities. Income documentation may include pay stubs, tax records, child support enforcement documentation, alimony court records, government benefit letters, and receipts for self-employed applicants. Documentation of participation in eligible activities may include school registration records, class schedules, or job training forms. Lead Agencies are encouraged to use automated verification systems and electronic recordkeeping practices to reduce paperwork. In addition, Lead Agencies may use client information collected and verified by other State programs (e.g., through the use of consolidated application forms) to streamline the eligibility determination process for CCDF. This new amendment would require Lead Agencies to institute procedures that ensure eligibility is appropriately verified and to monitor State, local, and non-governmental agencies directly engaged in eligibility determination and would provide additional safeguards to ensure that

children receiving child care subsidies are eligible pursuant to requirements found at § 98.20.

At § 98.68(d) we propose to require Lead Agencies to have processes in place to investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud. This new provision complements the existing requirement at § 98.60(h)(1) that requires Lead Agencies to recover child care payments that are made as the result of fraud; these payments must be recovered from the party responsible for committing the fraud. The proposed new provisions ensure that Lead Agencies have the necessary processes in place to identify fraud and program violations so that recovery can be pursued and so that the Lead Agency can better design practices and procedures that prevent fraud from occurring in the first place. Lead Agencies are encouraged to use automated payment systems for child care providers, such as direct deposit, in order to minimize the risk of fraud. We also recommend that each Lead Agency include staff dedicated to program integrity efforts and that these staff should partner with law enforcement as appropriate to address fraud.

Program integrity efforts can help ensure that limited program dollars are going to low-income eligible families for which assistance is intended; however, it is important to ensure that these efforts do not inadvertently impair access for eligible families. The Administration has emphasized that efforts to reduce improper payments and fraud must be undertaken with consideration for impacts on eligible families seeking benefits. In November 2009, the President issued Executive Order 13520, which underscored the importance of reducing improper payments in Federal programs while protecting access to programs by their intended beneficiaries (74 FR 62201). It states, ''The purpose of this order is to reduce improper payments by intensifying efforts to eliminate payment error, waste, fraud, and abuse in the major programs administered by the Federal Government, while continuing to ensure that Federal programs serve and provide access to their intended beneficiaries.''

It is important to have a strategic and intentional planning process to formalize mechanisms to promote program integrity and financial accountability while balancing quality and access for eligible families. Efforts to promote program integrity and financial accountability should not compromise child care access for eligible children and families. A foundation for accountability should be policies and procedures that help low-income parents' access child care assistance to support their work and training and promote children's success in school. Once a Lead Agency has established policies and procedures, steps should be taken to implement the program with fidelity and to include a variety of checks to detect areas both where there may be vulnerability to error or fraud and areas in which the system is failing to serve families well. Lead Agencies also can promote program integrity by clearly communicating specific policies to staff, parents, and providers. When policies are easily understood by the public and clearly communicated, parents and providers can better understand reporting requirements and deadlines.

Subpart H—Program Reporting Requirements

Content of Reports (Section 98.71)

Section 98.71 describes administrative data elements that Lead Agencies are required to report to ACF, including basic demographic data on the children served, the reason they are in care, and the general type of care (center-based, family child care home, regulated vs. unregulated provider). While this data provides useful contextual information on the population of children and families receiving CCDF subsidies, it does not include information on the quality of care for subsidized children, which is a gap in our ability to track our goals to serve more low-income children in high quality care.

We propose to add new § 98.71(a)(15) to require State and Territorial Lead Agencies to submit an indicator of the quality of the child care provider as part of the quarterly family case-level administrative data report. This data will allow ACF and Lead Agencies to describe the quality of child care for each child receiving a child care subsidy and is consistent with revisions proposed at § 98.33 related to consumer education that would require Lead Agencies to implement a system of transparent quality indicators to provide parents with a way to differentiate the quality of child care providers. Many States pay higher subsidy rates for quality care, and therefore already track some information on the quality of care for at least a portion of child care providers in the subsidy system. This information may include the provider's level under a QRIS, accreditation status, compliance with State pre-kindergarten standards, compliance with Head Start performance standards, or compliance with other State-defined measures of child care quality.

However, States vary greatly in the extent to which they use this quality data to improve management of their CCDF program, track quality improvement initiatives, and target financial incentives and technical assistance. In addition, none of this data is available at the national level. The limited and dated information that we have from research studies in selected States suggests that the quality of care in too many instances is mediocre or poor. Greater attention needs to be paid to quality of care that children receive, particularly low-income children in the subsidy system, to ensure that their care is promoting their learning and development to support success in school and life.

To address this situation, ACF has separately revised the CCDF quarterly family case-level administrative data report (ACF–801) in order to add data elements related to the quality of care for children receiving CCDF subsidies (76 FR 44934). The revisions at § 98.71 reflect this change to the ACF–801 form. In our revisions to the form, we have allowed for a range of potential responses in recognition of State flexibility and variation in implementing CCDF, and a phased-in implementation period to allow States the necessary time to modify systems and implement the reporting. Current paragraph (a)(15) would be re-designated as paragraph (a)(16) but otherwise is unchanged.

Subpart I—Indian Tribes

This subpart addresses requirements and procedures for Indian Tribes and Tribal organizations applying for or receiving CCDF funds. CCDF currently provides funding to approximately 260 Tribes and Tribal organizations that, either directly or through consortia arrangements, administer child care programs for over 500 federally-recognized Indian Tribes. Tribes and Tribal organizations receive 2 percent of CCDF funds, equaling over $100 million. With few exceptions, Tribal CCDF grantees are located in rural and economically challenged areas. In these communities, the CCDF program plays a crucial role in offering child care options to parents as they move toward economic self-sufficiency, and in promoting learning and development for children. In many cases, Tribal child care programs also emphasize traditional culture and language.

Tribal Consultation. ACF is committed to consulting with Tribal leadership on the provisions of this proposed rule. The requirements in this

rule were informed by past consultations and meetings with Tribal representatives on related topics, such as the recent revisions to the CCDF Tribal Plan, which addressed many of the same issues as this proposed rule—including health and safety, quality improvement, and program integrity. ACF has not yet formally consulted with Tribal leaders on the specific provisions of this proposed rule, but will consult with Tribes through appropriate venues during the public comment period. The consultations will be conducted in accordance with ACF's newly-revised Tribal Consultation Policy (76 FR 55678). Advance notice regarding these consultations will be disseminated to Tribes. Furthermore, we encourage Tribes to submit written comments during the public comment period.

In light of unique tribal circumstances, this proposed rule continues to balance flexibility for Tribes with the need to ensure accountability and quality child care for children. In Subpart I, the proposed rule maintains all existing provisions at § 98.80 (General Procedures and Requirements), § 98.81 (Application and Plan Procedures) and § 98.82 (Coordination). It proposes three changes to § 98.83 (Requirements for Tribal Programs). Below we discuss broader contextual issues, including how provisions located outside of Subpart I apply to Tribes, before moving to a discussion of the proposed changes to § 98.83.

First, we would note that Tribes continue to have the option to consolidate their CCDF funds under a plan authorized by the Indian Employment, Training and Related Services Demonstration Act of 1992 (Pub. L. 102–477). This law permits tribal governments to integrate a number of their Federally-funded employment, training, and related services programs into a single, coordinated comprehensive program. ACF does publish annual program instructions providing directions for Tribes wishing to consolidate CCDF funds under an Indian Employment, Training and Related Services plan. The Department of the Interior has lead responsibility for administration of Public Law 102–477 programs.

Subpart I continues to specify the extent to which general regulatory requirements apply to Tribes. In accordance with § 98.80(a), a Tribe shall be subject to all regulatory requirements in Parts 98 and 99, unless specifically exempted. We propose to add a new exemption for Tribes, from the requirements at § 98.50(b)(3) regarding funding mechanisms (which is discussed further below). However, Tribal Lead Agencies are generally subject to the new and revised provisions in this proposed rule—including, but not limited to, changes regarding: a child's eligibility for services at § 98.20, consumer education at § 98.33; health and safety requirements at § 98.41; and new program integrity provisions at § 98.68. We have included further discussion below regarding how a number of these specific provisions would apply to Tribes and Tribal organizations.

Health and safety standards. Tribes would be required to meet proposed revisions to § 98.41 which provide greater specificity regarding CCDF health and safety requirements. (In addition, as discussed below, we are proposing that Tribes be subject to immunization requirements that currently apply only to States and Territories; see discussion below).

The CCDBG Act, as amended by PRWORA, required HHS to develop minimum child care standards for Indian Tribes and Tribal Organizations receiving funds under the CCDF. These health and safety standards were first published in 2000 after three years of consultation with Tribes, Tribal organizations, and Tribal child care programs, and the standards were updated and reissued in 2005. The HHS minimum standards are voluntary guidelines that represent the baseline from which all programs should operate to ensure that children are cared for in healthy and safe environments and that their basic needs are being met.

Tribes may comply with the proposed new requirements at § 98.41 by adopting and implementing components of the minimum tribal standards issued by HHS, or by developing and implementing their own tribal child care standards. Many Tribes already exceed the minimum tribal standards issued by HHS, and some Tribes have used the minimum standards as the starting point for developing their own more specific tribal standards. The minimum Tribal standards issued by HHS are generally consistent with the proposed revisions at § 98.41, but we will be reviewing the standards to ensure that they adequately address all aspects of the proposed rule. We welcome comments that provide recommendations on any necessary updates to the minimum standards.

Consumer education. Tribes would also be subject to proposed new requirements at § 98.33 related to consumer education, with the exception of the requirement for a Web site at § 98.33(a), see further discussion below. These new provisions require Lead Agencies to collect and disseminate information on the quality of child care providers, using information from a transparent system of child care provider quality standards, such as a QRIS. We recognize that many Tribes lack the resources necessary to implement their own comprehensive quality standards or QRIS. However, Tribal Lead Agencies may encourage child care providers in their service areas to participate in State quality initiatives, such as QRIS, to the extent that such systems are available and culturally relevant to Tribes. Tribes may also satisfy the requirements at revised § 98.33 by tracking and disseminating other information related to quality of providers, such as: compliance with health and safety requirements; training that the provider has completed; the group size and adult-child ratio for the provider; whether the provider is accredited; or whether the provider meets certain quality standards. We also encourage Tribes to explore innovative new models for tracking and disseminating quality information as a consumer education strategy, and we look forward to providing technical assistance to support these efforts. Please see further discussion below regarding the applicability of new quality provisions at § 98.51 to Tribes.

Increased Lead Agency flexibility. Provisions in this proposed rule that are designed to increase Lead Agency flexibility (e.g., waiving family copayments at § 98.43; allowing higher standards of CCDF providers at § 98.30(g)) all apply to Tribes and will increase the ability of Tribal Lead Agencies to design programs that meet the unique needs of tribal communities. In addition, with two exceptions (related to immunization requirements and quality expenditures, which are discussed further below), the proposed rule would maintain all existing tribal exemptions from CCDF requirements. These existing provisions exempt Tribes from a number of CCDF requirements that apply to State Lead Agencies, in recognition of the unique social and economic circumstances of many tribal communities. For example, as is the case with the existing rule, Tribes continue to be subject to a 15 percent administrative cost limit, rather than the five percent limit that applies to States. Similarly, Tribes may use either State median income or Tribal median income when determining a child's eligibility.

Requirements for Tribal Programs (Section 98.83)

We propose four changes to section 98.83. First, we propose to exempt

Tribes from the requirement for a Web site at § 98.33(a). Under the proposed rule, this provision would require Lead Agencies to establish a user-friendly, easy-to-understand Web site to disseminate consumer education information about the full range of available providers and provider-specific information about health and safety requirements; including history of violation of requirements and any compliance actions taken. Where appropriate, we encourage Tribes to implement Web sites for consumer education, but we are exempting Tribes from the mandate in recognition of the unique circumstances of tribal programs. For example, in cases where tribal child care providers are licensed by the State, information about compliance with health and safety requirements should already be available on the State's Web site. Furthermore, in some instances, the small number of child care providers in the Tribe's service area may not warrant the development and maintenance of a Web site. Although we are exempting Tribes from the Web site requirement, Tribes will still be required to meet other provisions of § 98.33(a), (b) and (c)—specifically to disseminate consumer education information on the full range of available providers, including provider-specific information about health and safety, a transparent system of quality indicators, and specific information about the provider selected by a parent receiving a CCDF subsidy. Tribes will have flexibility for determining the most effective approaches for providing this information.

Second, we propose to exempt Tribes from the requirement at § 98.50(b)(3). As revised by this proposed rule, that provision would require direct services to be provided using funding methods provided for in § 98.30 (i.e., grant or contract, certificate), which must include some use of grants or contracts, with the extent of such services determined by the Lead Agency after consideration of the supply of high quality care, the needs of underserved populations, and the circumstances of local communities. This would require Lead Agencies to employ some use of grants or contracts to provide child care services. We are exempting Tribes from this requirement because we recognize that some Tribes, particularly those receiving smaller CCDF grant awards, may lack the resources necessary to provide services through a grant or contract. In addition, we recognize that many Tribes directly administer their own tribally-operated child care facilities, rather than purchasing slots through a grant or contract. These tribally-operated centers can accomplish many of the same goals as the use of grants and contracts (i.e., building supply, strengthening quality). For home-based care, grants or contracts with family child care providers or networks of family child care providers can be an effective approach to increase quality and supply in rural areas, including tribal service areas. The provision of services by Tribal Lead Agencies through certificates is already separately addressed at § 98.83(f), and is discussed in this preamble further below.

In addition, consistent with this proposed rule's overall focus on promoting high quality care that supports children's learning and development, we propose two changes in § 98.83 in order to strengthen health and safety requirements and quality initiatives for Indian children. First, we propose to revise § 98.83(d) to remove reference to § 98.41(a)(1)(i) and thereby extend coverage of CCDF health and safety requirements related to immunization so that the requirements would apply to Tribes, whereas previously Tribes were exempt. Second, we propose to revise § 98.83(f) so that all Tribes would be required to spend a minimum of 4 percent of CCDF expenditures on quality improvement activities; previously this requirement only applied to larger Tribes.

Immunization requirement. Under § 98.83(d) of the existing regulation, Tribes are currently exempt from the requirement at § 98.41(a)(1)(i) to assure that children receiving services under CCDF are age-appropriately immunized. The preamble to the 1998 Final Rule (63 FR 39953) indicated that Tribes were not subject to this regulatory requirement due to the anticipated development of tribal health and safety standards. The minimum tribal health and safety standards, required by section 658E(c)(2)(E)(ii) of the CCDBG Act, had not yet been developed and released by HHS at the time that the 1998 final rule was issued. Since HHS planned to consider immunization requirements as part of the consultation and development of the minimum tribal standards, it was premature at that time to address immunization requirements for Tribes through regulation.

However, the minimum tribal standards have subsequently been developed and released, and the standards address immunization in a manner that is consistent with the requirements at § 98.41(a)(1)(i). As a result, there is no longer a compelling reason to continue to exempt Tribes from this regulatory requirement. We believe that many Tribes have already moved forward with implementing immunization requirements for children receiving CCDF assistance. By extending the requirement to Tribes, we will ensure that Indian children receiving CCDF assistance are age-appropriately immunized as part of efforts to prevent and control infectious diseases.

As with States and Territories, Tribal Lead Agencies will have flexibility to determine the method to implement the immunization requirement. For example, they may require parents to provide proof of immunization as part of CCDF eligibility determinations, or they may require child care providers to maintain proof of immunization for children enrolled in their care. As indicated in the regulation, Lead Agencies have the option to exempt the following groups: (1) Children who are cared for by relatives; (2) children who receive care in their own homes; (3) children whose parents object on religious grounds; and (4) children whose medical condition requires that immunizations not be given. In determining which immunizations will be required, Tribal Lead Agencies have the flexibility to apply its own immunization recommendations or standards. Many Tribes may choose to adopt recommendations from the Indian Health Service or the State's public health agency.

Quality improvement activities. The existing rule at § 98.83(f) currently exempts smaller Tribes and tribal organizations (with total CCDF allocations less than an amount established by the Secretary) from the 4 percent quality requirement at § 98.51(a) and the requirement to operate a certificate program at §§ 98.15(a)(2) and 98.30(a) and (d). We propose to amend § 98.83(f) by deleting paragraph (3) so that smaller Tribes would continue to be exempt from operating a certificate program, but all Tribes regardless of size would now be required to spend at least 4 percent on quality improvement activities.

As discussed elsewhere in this preamble, a primary goal of this proposed rule is to promote high quality child care to support children's learning and development. Since comprehensive CCDF regulations were last issued in 1998, policymakers and administrators have increasingly focused on promoting school-readiness and positive child outcomes through systemic efforts to improve the quality of child care. We want to ensure that Indian children and Tribes benefit from these quality improvement efforts. Therefore, we plan to require that all Tribes meet the 4

percent quality requirement, which already applies to larger Tribes, States, and Territories under the existing statute and regulation. Approximately 50 Tribal Lead Agencies currently receive over $500,000 and are therefore already subject to the 4 percent quality requirement. This rule proposes to require that the remaining Tribes (over 200 Tribal Lead Agencies) meet the 4 percent quality requirement as well.

Since the quality requirement is applied as a percentage of the Tribe's CCDF expenditures, the amount required will be relatively small, and therefore not burdensome, for Tribes receiving smaller CCDF grant awards. There are a wide range of quality improvement activities that Tribes have the flexibility to implement, and the scope of these efforts can be adjusted based on the resources available so that even smaller Tribal Lead Agencies can effectively promote the quality of child care. We will provide technical assistance to help Tribes identify current activities that may count towards meeting the 4 percent quality requirement, as well as appropriate new opportunities to spend at least 4 percent on quality.

The proposed revisions to § 98.51 (Activities to Improve the Quality of Child Care), discussed earlier in this preamble, provide a systemic framework for organizing, guiding, and measuring progress of quality improvement activities. We recognize that this systemic framework may be more relevant for States, than for many Tribes, since the framework is based on the innovative work occurring in States related to quality improvement, such as the development of a QRIS. Such large-scale, comprehensive systemic initiatives may not always be appropriate for Tribes, given the unique circumstances of tribal communities. However, Tribes may implement selected components of the quality framework at § 98.51—such as training for child care providers or grants to improve health and safety.

While proposed revisions to § 98.51 lay out a new quality vision and framework, the revisions in no way restrict Tribes' ability to spend CCDF quality dollars on a wide range of quality improvement activities. Under existing § 98.51(a)(1), Tribes continue to have the flexibility to use quality dollars for activities that include, but are not limited to: activities designed to provide comprehensive consumer education to parents and the public; activities that increase parental choice; and activities designed to improve the quality and availability of child care. As is currently the case, these activities could include: resource and referral activities, consumer education, grants or loans to assist providers, training and technical assistance for providers, improving salaries and compensation of practitioners, monitoring or enforcement of health and safety standards, and other activities to improve the quality of child care. While Tribes have broad flexibility, to the degree possible Tribes should plan strategically and systemically when implementing their quality initiatives in order to maximize the effectiveness of those efforts.

In addition, we encourage strong Tribal-State partnerships that promote Tribal participation in States' systemic initiatives, as well as State support for Tribal initiatives. For example, Tribes and States can work together to ensure that quality initiatives in the State are culturally relevant and appropriate for Tribes, and to encourage Tribal child care providers to participate in State initiatives such as QRIS and professional development systems. Under existing § 98.82(a), Tribes must coordinate to the maximum extent feasible with the State CCDF Lead Agencies. At the same time, § 98.12(c) requires State CCDF Lead Agencies to coordinate, to the maximum extent feasible, with any Indian Tribes in the State receiving CCDF funds.

Certificate program. Under revised § 98.83(f) in the proposed rule, Tribes receiving smaller CCDF grants would continue to be exempt from operating a certificate program. We recognize that small Tribal grantees may not have sufficient resources or infrastructure to effectively operate a certificate program. In addition, many smaller Tribes are located in less-populated, rural communities that frequently lack the well-developed child care market and supply of providers that is necessary for a robust certificate program.

The dollar threshold for determining which Tribes are exempt from operating a certificate program is established by the Secretary. The threshold is not included in regulation, and therefore revising the threshold does not require a regulatory change. However, we would like to inform Tribes of our intent to update the threshold—which has been set at $500,000 since 1998. We are planning to increase the threshold to $700,000 starting with grants awarded in FY 2015. This change will recalibrate the threshold to a level that is comparable to the original threshold, after adjusting for inflation. It will expand the number of Tribes that are exempt from operating a certificate program, thereby ensuring that only Tribes of sufficient size are required to meet the certificate requirement. With this change, Tribal Lead Agencies with total CCDF allocations less than $700,000 in a fiscal year will be exempt from the requirement to operate a certificate program. Tribal Lead Agencies with allocations equal to or greater than $700,000 will be required to operate a certificate program.

Base amount. Similarly, although a regulatory change is not required, we are planning to update the base amount of funding that each Tribal Lead Agency receives as part of its Discretionary Fund award per the current § 98.61(c)(1)(i). For grants awarded starting in FY 2015, we are planning to increase the base amount from $20,000 to $30,000 in order to account for inflation that has eroded the value of the base amount since it was originally established in 1998. As referenced at the existing § 98.83(e), the base amount of any tribal grant is not subject to the administrative costs limitation at § 98.83(g) or the quality expenditure requirement at § 98.51(a). The base amount for each Tribal grant may be used for any activity consistent with the purposes of CCDF, including the administrative costs of implementing a child care program.

Subpart J—Monitoring, Non-Compliance, and Complaints

We propose no changes at Subpart J.

Subpart K—Error Rate Reporting

On September 5, 2007, ACF published a final rule that added subpart K to the CCDF regulations. This subpart, which was effective October 1, 2007, established requirements for the reporting of error rates in the expenditure of CCDF grant funds by the 50 States, the District of Columbia and Puerto Rico. The error reports were designed to implement provisions of the Improper Payments Information Act of 2002 (IPIA; Pub. L. 107–300). In July 2010, the President signed into law the Improper Payments Elimination and Recovery Act (IPERA) (Pub. L. 111–204) which amended the IPIA of 2002 and provided a renewed focus on government-wide efforts to control improper payments. In recent years, ACF has provided technical assistance and guidance to CCDF Lead Agencies to assist their efforts in preventing and controlling improper payments. These program integrity efforts help ensure that limited program dollars are going to low-income eligible families for which assistance is intended.

This proposed rule retains the error reporting requirements at subpart K, but proposes two changes which are discussed below. In addition to the

regulatory requirements at subpart K, details regarding the error rate reporting requirements are contained in forms and instructions that are established through the Office of Management and Budget's (OMB) information collection process. As part of the renewal process for these forms and instructions, ACF recently revised the methodology in the forms and instructions to measure improper payments rather than improper authorizations for payment recognizing that an improper authorization does not always lead to an improper payment.

Error Rate Reports and Content of Error Rate Reports (Sections 98.100 and 98.102)

Estimated annual amount of improper payments. As provided below, in this proposed rule, we propose to delete existing § 98.102(a)(5), thereby eliminating one of the data elements currently required as part of the error rate report submitted by Lead Agencies. With this change, Lead Agencies would no longer be required to submit the estimated annual amount of improper payments. We propose a corresponding deletion at § 98.100(b), which also describes the content of the error reports.

It is no longer necessary to require Lead Agencies to report the estimated annual amount of improper payments. ACF can use other existing sources of data (i.e., CCDF outlay data) along with the percentage of improper payments reported by Lead Agencies for the representative samples, in order to estimate the annual amount of improper payments for the program as a whole. The resulting standard methodology will eliminate inconsistencies resulting from separate Lead Agency estimates. This proposed change will also reduce the reporting burden currently imposed on the 50 States, DC, and Puerto Rico. A number of Lead Agencies have experienced challenges in reporting this information in the past. ACF plans to revise the error rate forms and instructions, through the information collection approval process, to eliminate this data element once the final rule is published.

Corrective action plan. We propose to add paragraph § 98.102(c) to require that any Lead Agency with an improper payment rate that exceeds a threshold established by the Secretary must submit a comprehensive corrective action plan, as well as subsequent reports describing progress in implementing the plan. This is a conforming change to match new requirements for corrective action plans that were contained in the recent revisions to the forms and instructions. The corrective action plan must be submitted within 60-days of the deadline for submission of the Lead Agency's standard error rate report required by § 98.102(c). The corrective action plan must include: identification of a senior accountable official, milestones that clearly identify actions to be taken to reduce improper payments and the individual responsible for completing each action, a timeline for completing each action within one year of ACF approval of the plan and for reducing improper payments below the threshold established by the Secretary, and targets for future improper payment rates. Subsequent progress reports must be submitted as requested by the Assistant Secretary. Failure to carry out actions described in the approved corrective action plan will be grounds for a penalty or sanction under § 98.92.

This proposed new requirement will strengthen CCDF program integrity and accountability. Existing CCDF regulations at § 98.102(a)(6) and (8) currently require all 50 States, DC and Puerto Rico to report error rate targets for the next reporting cycle and to describe actions that will be taken to correct causes of improper payments. However, the information reported by Lead Agencies sometimes lacks detail or specificity, is only reported on a three-year cycle, and does not include status updates about the Lead Agency's progress in implementing corrective action. More specific and timely requirements are necessary for Lead Agencies with high improper payment rates. Therefore, we propose that any Lead Agency exceeding a threshold of improper payments be required to submit a formal, comprehensive corrective action plan with a detailed description and timeline of action steps of how it will meet targets for improvement. The corrective action plan should also address any relevant findings from annual audits required by existing regulation at § 98.65(a), OMB Circular A–133, and the Single Audit Act. The Lead Agency would also be required to submit subsequent reports, on at least an annual basis, describing progress in implementing corrective action. These new requirements will ensure that Lead Agencies engage in a strategic and thoughtful planning process for reducing improper payments, take action in a timely fashion, and provide information on action steps that is transparent and available to the public.

The proposed rule indicates that the improper payment threshold, which triggers the requirement for a corrective action plan, will be established by the Secretary. Although the proposed rule provides flexibility to adjust the threshold in the future, the initial threshold will be an improper payment rate of 10 percent or higher. In other words, if a Lead Agency indicates that its improper payment rate reported in accordance with § 98.102(a)(3) equals or exceeds 10 percent, the Lead Agency will be subject to corrective action under proposed § 98.102(b). This 10 percent threshold is consistent with the IPERA which indicates that an improper payment rate of less than 10 percent for a Federal program is necessary for compliance. Under IPERA, ACF must submit a corrective action plan if the national improper payment rate for CCDF exceeds 10 percent. Since CCDF is administered by State and Territory Lead Agencies and the error rate review process is executed by States, the only effective way for ACF to achieve and maintain an improper payment rate below the 10 percent threshold is to hold Lead Agencies accountable.

V. Paperwork Reduction Act

A number of sections in this proposed rule refer to collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). In several instances, the collections of information for the relevant sections of this proposed rule have been approved previously under a series of OMB control numbers as indicated in the following table. The proposed rule does not modify these currently-approved collections.

CCDF title/code	Relevant section in the proposed rule	OMB control number	Expiration date
ACF–700 (CCDF Annual Report for Tribal Lead Agencies).	§ 98.71	0980–0241	12/31/2013
ACF–800 (Annual Aggregate Data Reporting)	§ 98.71	0970–0150	06/30/2015
ACF–801 (Monthly Case-Level Data Reporting)	§ 98.71	0970–0167	04/30/2015

CCDF title/code	Relevant section in the proposed rule	OMB control number	Expiration date
ACF–696 (Financial Reporting-States)	§ 98.65	0970–0163	05/31/2016 (renewal is under review at OMB)
ACF–696–T (Financial Reporting-Tribal Organizations).	§ 98.65	0970–0195	05/31/2016 (renewal is under review at OMB)
ACF–403, ACF–404, ACF–405 (CCDF Error Rate Reporting).	§§ 98.100 and 98.102	0970–0323	09/30/2015
CCDF–ACF –PI–2013–01 (Tribal Application for Construction Funds).	§ 98.84	0970–0160	03/31/2016

In other instances, the proposed rule seeks to modify several currently-approved information collections. HHS will publish **Federal Register** notices soliciting public comment on specific revisions to those information collections and will make available the proposed forms and instructions for review. To assist the public in reviewing the relevant provisions of the proposed rule, below is a summary of the status of these collections.

ACF–118 CCDF State Plan. The rule, at 45 CFR §§ 98.14, 98.16, 98.18, and 98.43, proposes to modify this existing information collection approved under OMB control number 0970–0114. The proposed rule adds several new requirements which States and Territories will be required to report in the biennial CCDF Plans, including provisions related to health and safety requirements, consumer education, and eligibility policies. As described earlier in the preamble, provisions included in a Final Rule will be incorporated into the review of FY 2016–2017 CCDF Plans that become effective October 1, 2015. HHS plans to publish separate **Federal Register** notices seeking public comment on this proposed information collection and the annual burden estimate.

ACF–118–A CCDF Tribal Plan. The rule, at 45 CFR 98.14, 98.16, 98.18, 98.43, 98.81, and 98.83, proposes to modify this existing information collection approved under OMB control number 0970–0198. The proposed rule adds several new requirements that Tribes and Tribal organizations will be required to report in the biennial CCDF Plans, including provisions related to health and safety requirements, consumer education, and eligibility policies. Provisions included in a Final Rule will be incorporated into the review of FY 2016–2017 CCDF Plans that become effective October 1, 2015. HHS plans to publish separate **Federal Register** notices seeking public comment on this proposed information collection and the annual burden estimate.

The table below provides annual burden estimates for existing information collections that are modified by this proposed rule. These estimates reflect the total burden of each information collection, including the changes made by this proposed rule.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–118 CCDF State Plan	56	0.5	163.5	4,578
ACF–118–A CCDF Tribal Plan	257	0.5	121	15,549

Finally, the proposed rule contains two new information collection requirements, and the table below provides an annual burden hour estimate for these collections. First, § 98.33 requires Lead Agencies to post provider-specific information to a user-friendly, easy to understand Web site as part of its consumer education activities (described earlier in this preamble). This Web site will provide information to parents about the degree to which specific child care providers meet State health and safety requirements and quality indicators. This requirement applies to the 50 States, District of Columbia, and five Territories that receive CCDF grants. States will have significant flexibility regarding how to implement this provision and each State will determine its own tailored approach based on existing practices, available resources, and other circumstances.

In estimating the burden estimate, we considered the fact that many States already have existing Web sites. Even in States without an existing Web site, much of the information will be readily available from licensing agencies, quality rating and improvement systems, and other sources. The burden hour estimate below reflects an average estimate, recognizing that there will be significant State variation. The estimate is annualized to encompass initial data entry as well as updates to the Web site over time. The total estimated dollar cost for all Lead Agencies is $2,000,000.

Second, § 98.41 requires Lead Agencies to establish procedures that require child care providers that care for children receiving CCDF subsidies to report to a designated State, territorial, or tribal entity any serious injuries or deaths of children occurring in child care. This is necessary for States to be able to examine the circumstances leading to serious injury or death of children in child care, and, if necessary, make adjustments to health and safety requirements and enforcement of those requirements in order to prevent any future tragedies

The requirement would potentially apply to the approximately 500,000 child care providers who serve children receiving CCDF subsidies, but only a portion of these providers would need to report, since our burden estimate assumes that no report is required in the absence of serious injury or death. Using currently available aggregate data on child deaths and injuries, we estimated the average number of provider respondents would be approximately 10,000 annually.

In estimating the burden, we considered that more than half the States already have reporting requirements in place as part of their licensing procedures for child care providers. States, Territories and Tribes have flexibility in specifying the

particular reporting requirements, such as timeframes and which serious injuries must be reported. While the reporting procedures will vary by jurisdiction, we anticipate that most providers will need to complete a form or otherwise provide written information.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per Respondent	Average burden hours per response	Total burden hours
Consumer Education Web site	56 States/Territories	1	260	14,560
Reporting of Serious Injuries and Death	10,000 child care providers	1	1	10,000

We will consider public comments regarding information collection in the following areas: (1) Evaluating whether the proposed collection is necessary for the proper performance of the CCDF program, including whether the information will have practical utility; (2) evaluating the accuracy of the estimated burden of the proposed collection; (3) enhancing the quality, usefulness, and clarity of the information to be collected; and (4) minimizing the burden of the collection of information, including the use of appropriate technology.

Written comments regarding information collection should be sent to ACF, and to the Office of Management and Budget, Office of Information and Regulatory Affairs (Attention: Desk Officer for the Administration for Children and Families) by email to: *oira_submission@omb.eop.gov*, or by fax to (202) 395–7285.

VI. Regulatory Flexibility Act

The Secretary certifies that, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), this proposed rule will not result in a significant economic impact on a substantial number of small entities. This proposed rule is intended to ensure accountability for Federal funds consistent with the purposes of the CCDBG Act and regulations and is not duplicative of other requirements. The primary impact of this proposed rule is on State, Tribe, and Territorial grantees since the proposed changes articulate a set of expectations for how grantees are to satisfy certain requirements in the CCDBG Act. To a lesser extent the proposed rule could affect individuals and small businesses, particularly family child care providers, however the number of entities affected should be limited and the economic impact has not been determined to be significant. We have proposed changes to better balance the dual purposes of the program by adding provisions which would ensure that healthy, successful child development is a consideration when establishing policies for the CCDF program (e.g., preserving continuity in child care arrangements), and to ensure that child care providers caring for children receiving subsidies meet basic standards for ensuring the safety of children and have minimum training in health and safety. These include requirements for comprehensive criminal background checks and health and safety training in areas such as first-aid and CPR that may impact child care providers caring for children receiving CCDF subsidies. Some child care providers, particularly family child care providers that do not already meet these requirements, may incur some burden. However, we do not believe these new requirements will have a significant economic impact on a substantial number of small entities since we expect Lead Agencies to use CCDF funds to assist child care providers in meeting the requirements. For example, as indicated at proposed § 98.51(a)(2)(i), Lead Agencies may use quality funds to support activities that ensure the health and safety of children.

VII. Regulatory Impact Analysis

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule meets the criteria for a significant regulatory action under E.O. 12866 and thus has been reviewed by OMB. For the reasons set forth below, ACF does not believe the impact of this proposed regulatory action would be economically significant and that the total cost would fall well below the $100 million threshold.

Need for the proposed rule. The impetus for this proposed rule is based on the need to reform and update the CCDF program, which has not undergone a significant regulatory review or revision in more than 15 years. Since then, there has been a growing body of research on early childhood development underscoring the importance of children's earliest experiences and impacts on their later success. Given that CCDF is a program that provides Federal financial assistance to pay for child care for low-income children, it is absolutely essential that policy and program priorities be informed by this research. It is no longer sufficient to consider the quality of care arrangements for children receiving CCDF assistance as an afterthought to the function of the program as a work support for low-income parents. The CCDF program must necessarily be concerned with ensuring that child care providers caring for children meet minimum requirements for maintaining healthy and safe environments and work to improve the quality of those environments to the greatest extent possible. Many States, Territories, and Tribes administering CCDF have long since recognized this dual-purpose framework and have used their flexibility within the block grant program to adopt practices and policies that reflect these goals. However, implementation of the CCDF program across the country varies greatly. Lack of substantive Federal regulatory guidance in areas such as health and safety, quality, and eligibility policy jeopardizes accountability in the sense that all families receiving CCDF assistance, regardless of what State, Territory or Tribe they may reside in, should have basic assurances about the quality of services they receive. This proposed rule seeks to establish concrete expectations in these areas to better balance the dual purposes of the CCDF program and fully leverage its two-generational impact.

Benefits of the proposed rule. CCDF provides financial assistance to make child care more affordable so that parents can work or attend job training or educational programs. As stated throughout this proposed rule, we envision the program as also providing children in those families access to high quality care to ensure their healthy, safe development. In FY 2011, the CCDF program provided assistance to nearly 1.6 million children in nearly 1 million families. In addition, approximately 500,000 child care providers provided services to children receiving CCDF subsidies. The changes in this proposed rule are almost wholly directed towards improving the lives of the children and families we serve and improving health and safety and quality of child care providers caring for those children. In short, the changes in this proposed rule have three primary beneficiaries—low-income working parents, low-income children, and child care providers serving these families.

We have included several changes in this proposed rule that we believe will improve the continuity of services and stability of child care arrangements for families receiving CCDF. The benefits of these changes are not easily quantified, but can have a profound effect on the lives of the low-income parents and children we serve. For example, we anticipate that changes in the proposed rule will mean that a parent can retain their subsidy after experiencing job loss in order to search for new employment. In some States, parents enter into downward spirals when they lose their jobs and potentially lose their child care, jeopardizing the stability of care arrangements and stifling any positive impacts the arrangements may have had on their children's development. In other States, when parents lose their jobs, they maintain their subsidies and child care while they search for new jobs, leading to less stress on their families and preserving their children's relationships with their caregivers. We know that about half of the States already allow for a certain period of job search for parents that lose employment. Therefore, the benefits of this particular policy change will primarily be directed towards the CCDF families and children in the remaining States that have yet to adopt this practice.

Several of the changes in this proposed rule benefit child care providers and the children they serve. To the extent that the proposed rule causes a child care provider to receive training in basic areas of health and safety where they might not otherwise have been compelled to, this proposed rule will have spillover effects that reach not only the CCDF child in that providers' care, but all the children cared for by that provider. We believe the new health and safety requirements are a benefit to public health and safety because they are aimed at practices that ultimately are intended to reduce the incidence of injury and death for children in child care. For example, if a child care provider receives certification in CPR or is knowledgeable in poison prevention and safety then they are in a better position to respond to or prevent an emergency if a child is in danger. If a child care provider is trained in SIDS prevention then children in their care are less likely to be at risk. We believe that improving accountability for Federal dollars means paying for safe, healthy child care and ensuring children are cared for by providers with a minimum of health and safety training. The requirement for child care providers to have a core body of knowledge will also place more providers on a career pathway, increasing their opportunities to develop professional knowledge necessary for advancement.

Finally, changes in this proposed rule related to quality improvement and consumer education activities also will benefit not only CCDF families, but also the general public. For example, if a child care provider receives a grant funded by CCDF to implement a new curriculum as part of a quality improvement activity, then that investment will benefit all the children in that provider's care. In addition, one of the changes in this proposed rule would require States to post provider-specific information on a Web site with information about health and safety and licensing or regulatory requirements met by the provider, including the history of licensing violations and date of last inspection. We believe making this information readily available and transparent to parents will promote more informed child care choices. In all of these ways we believe that changes in this proposed rule will not only directly benefit CCDF parents, children and providers, but also have a valuable public benefit with the possibility of impacting many families far beyond the immediate reach of the CCDF program.

Costs of the proposed rule. At the beginning of this proposed rule, we explain that one of the reasons for revising the CCDF regulations is to better reflect State and local practices to improve the quality of child care and the tremendous strides that have been made in implementation of evidence-based policies. As such, in many of the areas where changes are proposed there are a significant number of States and Territories that have already implemented these policies, and we have been purposeful throughout to note these numbers. The cost of implementing the changes in this proposed rule will vary depending on a State's specific situation. We conducted an analysis of State and Territory responses in the FY 2012–2013 CCDF Plans covering five of the key policy areas where we anticipate there could be cost implications. [Note: The analysis of CCDF Plans throughout this proposed rule includes a total of 56 State and Territorial CCDF Plans, including American Samoa, Guam, Northern Marianas Islands, Puerto Rico, and the Virgin Islands.]

Parental complaint hotline. The proposed rule includes a new requirement at § 98.32(a) that Lead Agencies must establish or designate a hotline for parents to submit complaints about child care providers. In the FY 2012–2013 CCDF plans, 10 States reported having a toll-free hotline for parents to submit child care-related complaints. An additional 16 States list public toll-free numbers on their Web sites for parents to contact the child care office. Establishing or designating a hotline may lead to additional costs for States, such as those associated with establishing a new hotline system or staff time used to answer the hotline. However, Lead Agencies have flexibility in implementing the proposed hotline and may work with other agencies in the State to adapt existing hotlines, such as those used to report child abuse and neglect.

Consumer Education. The proposed rule includes two new requirements that may increase costs as part of the statutory requirement that Lead Agencies collect and disseminate consumer education information about child care. The first of these requirements is that Lead Agencies must post provider-specific information on a Web site. The second is that Lead Agencies must implement a transparent system of quality indicators.

We propose amending paragraph (a) of § 98.33 to require Lead Agencies to post provider-specific information to a user-friendly, easy to understand Web site as part of its consumer education activities. The proposed change would require Lead Agencies to list available child care providers on a Web site with provider-specific information about any health and safety, licensing or regulatory requirements met by the provider, any history of violations of these requirements, and any compliance actions taken, as well as information about the quality of the provider, if available, as identified through a

transparent system of quality indicators. The Web site must also include a description of health and safety, licensing or regulatory requirements for child care providers within the Lead Agency's jurisdiction and processes for ensuring providers meet those requirements, including the background check process for providers and any other individuals in the child care setting, and offenses that may preclude a provider from serving children. Lead Agencies have flexibility to determine how to improve transparency to the public regarding child care provider licensing violations and compliance actions taken. Making provider compliance information widely available on a dedicated Web site allows parents to make informed choices, and for purposes of the CCDF subsidy program, is key to ensuring that parental choice is meaningful.

Creating and maintaining a Web site with provider-specific information may come with new costs for Lead Agencies. However, as the majority of States already have these Web sites in place, we do not expect this requirement to create a significant financial burden. According to a preliminary analysis of the FY 2012–2013 CCDF Plans, at least 30 States and Territories make all licensing information available to parents and the public online. Ten States and Territories reported making at least some licensing information available on a public Web site or other online tool. Therefore, this proposed change is consistent with current practices in many States and will not create new costs for them.

At new paragraph § 98.33(b) we propose to require Lead Agencies to collect and disseminate consumer education through a transparent system of quality indicators. The system must include provider-specific information about the quality of child care providers; (2) describe the standards used to assess the quality of child care; (3) take into account teaching staff qualifications, learning environment, curricula and activities; and (4) disseminate provider-specific quality information through a Web site or other alternate mechanism. Each Lead Agency has the flexibility to develop a system of quality indicators based on its specific needs. The costs associated with implementing a transparent system of quality indicators will depend on what consumer education activities the Lead Agency currently has in place. According to the FY 2012–2013 CCDF Plans, more than half the States have implemented quality rating and improvement systems (QRIS) and additional States have a QRIS in one or more localities that has not been implemented statewide. Therefore, additional costs would be associated with expanding the QRIS or creating a means of disseminating quality information to parents and the public in an easy-to-understand manner.

Background Checks. We propose to amend § 98.41(a)(2)(i) of the regulations to include comprehensive background checks on child care providers serving children receiving CCDF subsidies (excepting relative and in-home providers at the State's discretion), including use of fingerprints for State checks of criminal history records, use of fingerprints for checks of FBI criminal history records, clearance through the child abuse and neglect registry, if available, and clearance through the sex offender registry. According to the FY 2012–2013 CCDF Plans, all States and Territories have some infrastructure in place to conduct criminal background checks on child care providers. However, States vary in the extent to which they require different types of providers to receive background checks and many do not require the use of fingerprints for background checks.

For example, 53 States and Territories already require that child care center staff undergo at least one type of criminal background check, however only 40 States and Territories conduct FBI checks that include fingerprints. Similarly, 50 States and Territories require family child care providers to have a criminal background check and 36 require an FBI background check that includes fingerprints. The majority of States and Territories already have requirements in place for checks of child abuse and neglect registries and over half have a sex offender registry requirement in place. While some States may have to revise their background check policies or expand the requirement to be inclusive of additional providers, all States are already in partial compliance with the proposed provision.

Additionally, the Lead Agency can work with other State or local organizations that may already have the necessary equipment and resources to carry out the comprehensive background checks as a way of reducing administrative burden and associated costs. Many State agencies have already purchased Livescan technology that significantly decreases delays and administrative burdens associated with fingerprint-based checks. The cost of conducting criminal background checks will vary from State to State, but an FBI background check should only cost between $18 and $24. States currently have several methods for allocating the expense of background checks. Lead Agencies may use CCDF funds to pay for comprehensive background checks, and can potentially obtain funds from other Federal sources such as the National Criminal History Improvement Program (NCHIP) and the Adam Walsh Implementation Grants. Lead Agencies may also require that providers assume responsibility for background check fees as a cost of doing business. In some States, the child care facility pays for staff members' background checks. Almost half of the States currently require individuals to pay for their own background checks. Since the cost of the background check requirement is not borne solely by the State, the cost of implementing this provision will be diffused throughout the field. While this may represent an additional burden for some child care providers, current practice indicates that background check expenses are already considered a reasonable cost of doing business within the field of child care. In addition, States can implement systems to facilitate making background check verifications portable, reducing the cost to providers in an industry with traditionally high turnover.

Pre-inspections for compliance with fire, health and building codes. The proposed rule adds a new requirement at § 98.41(a)(2)(ii) requiring States to ensure providers are in compliance with State and local applicable fire, health, and building codes, prior to serving children receiving CCDF subsidies. According to the *2011 Child Care Licensing Study* (prepared by the National Center on Child Care Quality Improvement and the National Association of Regulatory Administrators), 39 States require fire, health, and building code (also called environmental) inspections for child care centers. Many States also conduct separate licensing inspections prior to issuing a license to a child care center. For family child care providers, 12 states require fire, health, and building code inspections. Further, of the 42 states that license family child care homes, 37 conduct an inspection before issuing a license to a family child care home. Since fire, health, and building codes vary across States, the financial impact of this new requirement will also vary. States already have systems in place to conduct these inspections, and enforcement of the applicable codes may already be happening at the local level. Further, we are seeking public comment on an appropriate phase-in and timeframe for this provision, as well

as the requirement for comprehensive criminal background checks.

Health and safety training. We propose adding a list of minimum health and safety pre-service or orientation training for providers serving children receiving CCDF assistance. A preliminary analysis of the 2012–23 CCDF Plans shows that many States have a number of these trainings already in place for their licensed providers. Thirty-eight States already require pre-service CPR training for child care centers and 43 require it for family child care providers. Forty States already require pre-service first-aid training for centers and 43 require it for family child care providers. Most of the other trainings are offered to licensed center and family child care providers in approximately half of the States. However, since this only captures the current training data for licensed providers, the new requirements will most likely require an expansion of the trainings offered to license-exempt CCDF providers. This is important because many child care providers serving children receiving CCDF subsidies either are not required to be licensed or have been exempted from licensing requirements by States. Approximately 10 percent of CCDF children are cared for by non-relatives in unregulated centers and homes. In these cases, CCDF health and safety requirements are the primary, and in most cases, the only safeguard in place to protect children in this type of care.

We recognize that it may not be possible for child care providers serving subsidized children to meet all the listed minimum health and safety training requirements prior to the first day of service. Therefore, we are allowing Lead Agencies to require the training prior to the provider's start of service (i.e., pre-service) or during the initial service period (i.e., orientation). We are leaving it to the Lead Agency's discretion to specifically define ''pre-service'' and ''orientation,'' which may include stipulations that the training be completed within the first weeks or month of providing child care services to children receiving CCDF assistance. Lead Agencies should also offer a grace period to providers who are already serving children receiving CCDF assistance to minimize disruptions to child care arrangements for children currently enrolled with a provider and receiving subsidies. Additionally, many of the areas included in the proposed new requirements are readily available through on-line trainings, which should minimize burden on Lead Agencies.

Monitoring. We propose to amend 98.41(d) to require that Lead Agencies include unannounced on-site monitoring as part of their procedures to ensure providers serving children receiving CCDF assistance meet health and safety requirements. All providers serving children receiving CCDF subsidies must be subject to unannounced on-site monitoring. Further, Lead Agencies may not solely rely on self-certification of compliance with health and safety requirements and must include unannounced visits. The proposed change would allow Lead Agencies to retain the flexibility to determine the frequency and components of unannounced on-site monitoring visits. However, we are seeking comment on the recommendation that States conduct an initial on-site monitoring visit and at least one annual unannounced visit.

There is currently significant variation across States regarding the nature and intensity of on-site monitoring. According to the FY 2012–2013 CCDF Plans, States and Territories report using both announced and unannounced routine visits as a way to enforce licensing requirements with different policies applicable to child care centers versus family child care homes. Almost all Lead Agencies have an on-site monitoring component in place for licensed center and family child care providers, but 28 do not monitor unlicensed providers. Therefore, about half of the Lead Agencies will need to expand their on-site monitoring practices to include unlicensed providers caring for children receiving CCDF subsidies.

The new requirement may create additional costs for Lead Agencies because it could potentially expand the number of child care providers subject to unannounced on-site monitoring. These costs may include the need for additional monitoring staff or funding of contracts to carry out monitoring visits, new training for staff to ensure knowledge of new health and safety requirements, or additional tools and supplies necessary to carry out effective monitoring visits. However, because all States have an infrastructure for on-site monitoring visits through their licensing systems, we do not believe this requirement will create a significant financial burden for the majority of States. In FY 2011, there were approximately 500,000 providers caring for children receiving CCDF subsidies. Of these, approximately 180,000 were relative providers and approximately 39,000 in-home providers providing care in the child's home. The proposed rule allows Lead Agencies the option to exempt both relative and in-home providers from the health and safety and monitoring requirements. The remaining 205,000 child care providers must be subject to health and safety and monitoring requirements and about two-thirds of these providers are reported as licensed or regulated by the State and thus would potentially already be subject to monitoring. Therefore, we estimate approximately 90,000 providers (that are not relatives or in-home providers) caring for children receiving CCDF subsidies are currently unlicensed and would now be subject to monitoring. This number is potentially larger to the extent that States choose to apply monitoring and health and safety requirements to relative and in-home providers. This total is a national total and the distribution varies by State.

VIII. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a written statement before promulgating a 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 million or more in any one year. If an agency must prepare a budgetary impact statement, section 205 requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule consistent with the statutory requirements. Section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted. The Department has determined that this proposed rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

IX. Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. Chapter 8.

X. Executive Order 13132

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. This proposed rule will not have substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule does not preempt State law. In large part, the changes included in the proposed rule are based upon practices

already implemented by many States. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

XI. Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 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, HHS has concluded that it is not necessary to prepare a Family Policymaking Assessment.

List of Subjects in 45 CFR Part 98

Child Care, Grant programs-social programs.

For the reasons set forth in the preamble, we propose to amend part 98 of 45 CFR as follows:

PART 98—CHILD CARE AND DEVELOPMENT FUND

■ 1. The authority citation for part 98 continues to read:

Authority: 42 U.S.C. 618, 9858, *et seq.*

■ 2. Amend § 98.1 by revising paragraph (b) to read as follows:

§ 98.1 Goals and purposes.

* * * * *

(b) The purpose of the CCDF is to increase the availability, affordability, and quality of child care services. The program offers Federal funding to States, Territories, Indian Tribes, and tribal organizations in order to:

(1) Provide low-income families with the financial resources to find and afford high quality child care for their children and serve children in safe, healthy, nurturing child care settings that are highly effective in promoting learning, child development, school readiness and success;

(2) Enhance the quality and increase the supply of child care and before- and after-school care services for all families, including those who receive no direct assistance under the CCDF, to support children's learning, development, and success in school;

(3) Provide parents with a broad range of options in addressing their child care needs by expanding high quality choices available to parents across a range of child care settings and providing parents with information about the quality of child care programs;

(4) Minimize disruptions to children's development and learning by promoting continuity of care;

(5) Ensure program integrity and accountability in the CCDF program;

(6) Strengthen the role of the family and engage families in their children's development, education, and health;

(7) Improve the quality of, and coordination among Federal, State, and local child care programs, before- and after-school programs, and early childhood development programs to support early learning, school readiness, youth development and academic success; and

(8) Increase the availability of early childhood development and before- and after-school care services.

* * * * *

■ 3. Amend § 98.2 by revising the definition for *Categories of care,* the introductory text of paragraph (1) in the definition of *Eligible child care provider,* and the definition of *Family child care provider* and removing the definition of *Group home child care provider.*

The revisions read as follows:

§ 98.2 Definitions.

* * * * *

Categories of care means center-based child care, family child care and in-home care;

* * * * *

Eligible child care provider means:

(1) A center-based child care provider, a family child care provider, an in-home child care provider, or other provider of child care services for compensation that—

* * * * *

Family child care provider means one or more individual(s) who provide child care services for fewer than 24 hours per day per child, as the sole caregiver(s), in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work;

* * * * *

■ 4. Amend § 98.10 by revising paragraphs (d) and (e) and adding paragraph (f) to read as follows:

§ 98.10 Lead Agency responsibilities.

* * * * *

(d) Hold at least one public hearing in accordance with § 98.14(c);

(e) Coordinate CCDF services pursuant to § 98.12; and

(f) Implement practices and procedures to ensure program integrity and accountability pursuant to § 98.68.

■ 5. Amend § 98.11 by adding a sentence to the end of paragraph (a)(3) to read as follows:

§ 98.11 Administration under contracts and agreements.

(a) * * *

(3) * * * The contents of the written agreement may vary based on the role the entity is asked to assume or the type of project undertaken, but must include, at a minimum, tasks to be performed, a schedule for completing tasks, a budget which itemizes categorical expenditures consistent with CCDF requirements at § 98.65(h), and indicators or measures to assess performance.

* * * * *

■ 6. Amend § 98.14 by revising paragraphs (a)(1)(C) and adding paragraphs (a)(1)(E), (F), (G), (H), and (I), and (d) to read as follows:

§ 98.14 Plan process.

* * * * *

(a)(1) * * *

(C) Public education (including agencies responsible for pre-kindergarten services, if applicable, and educational services provided under Part B and C of the Individuals with Disabilities Education Act (20 U.S.C. 1400));

* * * * *

(E) Child care licensing;

(F) Head Start collaboration;

(G) State Advisory Council on Early Childhood Education and Care authorized by the Head Start Act (42 U.S.C. 9831 *et seq.*) (if applicable);

(H) Statewide afterschool network or other coordinating entity for out-of-school time care (if applicable); and

(I) Emergency management and response.

* * * * *

(d) Make the Plan and any Plan amendments publicly available.

■ 7. Amend § 98.16 by

■ a. Redesignating paragraph (r) as paragraph (w), paragraphs (g) through (q) as (i) through (s), and paragraphs (b) through (f) as (c) through (g);

■ b. Adding new paragraphs (b) and (h);

■ c. Revising newly redesignated paragraphs (g)(6), (i)(1), (i)(5), (j), (k), (l),(n), (o), and (q); and

■ d. Adding new paragraphs (t), (u), and (v).

The additions and revisions read as follows:

§ 98.16 Plan provisions.

* * * * *

(b) A description of processes the Lead Agency will use to monitor administrative and implementation responsibilities undertaken by agencies other than the Lead Agency including

descriptions of written agreements, monitoring and auditing procedures, and indicators or measures to assess performance pursuant to § 98.11(a)(3);

* * * * *

(g) * * *

(6) Working (which must include some period of job search);

* * * * *

(h) A description of policies to promote continuity of care for children and stability for families receiving services for which assistance is provided under this part, including:

(1) Policies that take into account developmental needs of children when authorizing child care services pursuant to § 98.20(d);

(2) Timely eligibility determination and processing of applications; and

(3) Policies that promote employment and income advancement for parents.

(i) * * *

(1) A description of such services and activities, including how the Lead Agency will address supply shortages through the use of grants or contracts. The description should identify any shortages in the supply of high quality child care providers, including for specific localities and populations, list the data sources used to identify shortages, and explain how grants or contracts for direct services will be used to address such shortages;

* * * * *

(5) Any additional eligibility criteria, priority rules, definitions, and policies, including any requirements for families to report changes in circumstances that may impact eligibility, established pursuant to § 98.20(b) and (c);

(j) A description of the activities to provide comprehensive consumer education, which must include a transparent system of quality indicators, pursuant to § 98.33(b), that provides parents with provider-specific information about the quality of child care providers in their communities; to increase parental choice; and to improve the quality and availability of child care, pursuant to § 98.51;

(k) A description of the sliding fee scale(s) (including any factors other than income and family size used in establishing the fee scale(s)) that provide(s) for cost sharing by the families that receive child care services for which assistance is provided under the CCDF and how co-payments are affordable for families, pursuant to § 98.42. This shall also include a description of the criteria established by the Lead Agency, if any, for waiving contributions for families;

(l) A description of the health and safety requirements, applicable to all providers of child care services for which assistance is provided under the CCDF, in effect pursuant to § 98.41, which must include a description of unannounced, on-site monitoring and other enforcement procedures in effect to ensure that providers of child care services for which assistance is provided under the CCDF comply with all applicable health and safety requirements pursuant to § 98.41(d);

* * * * *

(n) Payment rates and a summary of the facts, including a biennial valid local market price study or alternate approved methodology, relied upon to determine that the rates provided are sufficient to ensure equal access pursuant to § 98.43, which must include a description of how the quality of providers of child care services for which assistance is provided under this part is taken into account when determining payment rates;

(o) A detailed description of the hotline established or designated by the State for receiving parental complaints, of how the State maintains a record of substantiated parental complaints and how it makes information regarding those complaints available to the public on request, pursuant to § 98.32;

* * * * *

(q) A detailed description of licensing requirements applicable to child care services provided, any exemptions to those requirements and a rationale for such exemptions, and a description of how such licensing requirements are effectively enforced, pursuant to § 98.40;

* * * * *

(t) A description of payment practices for child care services for which assistance is provided under this part, including timely reimbursement for services, how payment practices support providers' provision of high quality child care services, and practices to promote the participation of child care providers in the subsidy system;

(u) A description of processes in place to investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud pursuant to § 98.68(d);

(v) An annual quality performance report by the States and Territories to the Secretary, which must be made publicly available, and include:

(1) A description of progress related to meeting performance goals through activities to improve the quality of child care pursuant to § 98.51(f); and

(2) A report describing any changes to State regulations, enforcement mechanisms, or other State policies addressing health and safety based on an annual review and assessment of serious injuries or deaths of children occurring in child care (including both regulated and unregulated child care centers and family child care homes).

* * * * *

■ 8. Amend § 98.18 by designating paragraph (b) and paragraph (b)(1) and adding paragraph (b)(2) to read as follows:

§ 98.18 Approval and disapproval of Plans and Plan amendments.

* * * * *

(b) * * *

(2) Lead Agencies must provide advance, written notice to affected parties (i.e., parents and child care providers) of substantial changes in the program that adversely affect income eligibility, payment rates, and/or sliding fee scales.

* * * * *

■ 9. Amend § 98.20 by:

■ a. Revising paragraphs (a)(2), (a)(3)(ii) introductory text and (a)(3)(ii)(A);

■ b. Redesignating paragraph (b) as paragraph (c);

■ c. Adding a new paragraph (b); and

■ d. Adding paragraph (d)

The revisions and additions read as follows:

§ 98.20 A child's eligibility for child care services.

(a) * * *

(2) Reside with a family whose income does not exceed 85 percent of the State's median income (SMI) for a family of the same size. The SMI used to determine the eligibility threshold level must be based on the most recent SMI data that is published by the Bureau of the Census; and

(3) * * *

(ii) Receive, or need to receive, protective services, which may include specific populations of vulnerable children as identified by the Lead Agency, and reside with a parent or parents (as defined in § 98.2) other than the parent(s) described in paragraph (a)(3)(i) of this section.

(A) At grantee option, the requirements in paragraph (a)(2) of this section and in § 98.42 may be waived for families eligible for child care pursuant to this paragraph, if determined to be necessary on a case-by-case basis.

* * * * *

(b) A Lead Agency shall re-determine a child's eligibility for child care services no sooner than 12 months following the initial determination or most recent re-determination, subject to the following:

(1) During the period of time between re-determinations a Lead Agency, at its option, may consider a child to be

eligible pursuant to some or all of the eligibility requirements specified in paragraph (a) of this section, if the child met all of the requirements in paragraph (a) on the date of the most recent eligibility determination or re-determination.

(2) The Lead Agency shall specify in the Plan any requirements for families to report changes in circumstances that may impact eligibility between re-determinations.

* * * * *

(d) Lead Agencies must take into consideration developmental needs of children when authorizing child care services and are not restricted to limiting authorized child care services based on the work, training, or educational schedule of the parent(s).

■ 10. Amend § 98.30 by:

■ a. Revising paragraph (a)(1);

■ b. Removing paragraph (e)(1)(ii) and redesignating paragraphs (e)(1)(iii) and (iv) as paragraphs (e)(1)(ii) and (iii);

■ c. Adding paragraphs (g) and (h).

The revisions and additions read as follows:

§ 98.30 Parental choice.

(a) * * *

(1) To enroll such child with an eligible child care provider that has a grant or contract for the provision of such services, in accordance with § 98.50; or

* * * * *

(g) As long as provisions at paragraph (f) of this section are met, parental choice provisions shall not be construed as prohibiting a Lead Agency from establishing policies that require providers of child care services for which assistance is provided under this part to meet higher standards of quality as identified in a quality improvement system or other transparent system of quality indicators pursuant to § 98.33.

(h) Parental choice provisions shall not be construed as prohibiting a Lead Agency from providing parents with information and incentives that encourage the selection of high quality child care.

■ 11. Amend § 98.32 by redesignating paragraphs (a) through (c) as paragraphs (b) through (d) and adding a new paragraph (a) to read as follows:

§ 98.32 Parental complaints.

* * * * *

(a) Establish or designate a hotline for parents to submit complaints about child care providers;

* * * * *

■ 12. Amend § 98.33 by:

■ a. Revising paragraph (a);

■ b. Redesignating paragraphs (b) and (c) as paragraphs (d) and (e);

■ c. Adding new paragraphs (b) and (c); and

■ d. In newly redesignated paragraph (e) removing ''paragraph (b)'' and adding in its place ''paragraph (d)''.

The revision and additions read as follows:

§ 98.33 Consumer education.

* * * * *

(a) Certify that it will collect and disseminate to parents and the general public, through a user-friendly, easy-to-understand Web site and other means identified by the Lead Agency, consumer education information that will promote informed child care choices including, at a minimum, information about:

(1) The full range of available providers, including:

(i) Provider-specific information about any health and safety, licensing or regulatory requirements met by the provider, including the date the provider was last inspected;

(ii) Any history of violations of these requirements; and

(iii) Any compliance actions taken.

(2) A description of health and safety requirements and licensing or regulatory requirements for child care providers and processes for ensuring that child care providers meet those requirements. The description must include information about the background check process for providers, and any other individuals in the child care setting (if applicable), and what offenses may preclude a provider from serving children.

(b) As part of its consumer education activities, implement a transparent system of quality indicators appropriate to the provider setting, such as those reflected in a quality rating and improvement system or other system established by the Lead Agency, to provide parents with a way to differentiate the quality of child care providers available to them in their communities through a rating or other descriptive method. The system must:

(1) Include provider-specific information about the quality of child care;

(2) Describe the standards used to assess the quality of child care providers;

(3) Take into account teaching staff qualifications and/or competencies, learning environment, curricula and activities; and

(4) Disseminate provider-specific quality information, if available, through the Web site described in paragraph (a) of this section, or through an alternate mechanism which the Lead Agency shall describe in the CCDF Plan, which shall include a description of how the mechanism makes the system of quality indicators transparent.

(c) For families that receive assistance under this part, provide information about the child care options available to them as described in paragraphs (a) and (b) of this section, and specific information about the child care provider selected by the parent, including health and safety requirements met by the provider described at 98.41(a), any licensing or regulatory requirements met by the provider, any voluntary quality standards met by the provider pursuant to paragraph (b) of this section, and any history of violations of health and safety, licensing or regulatory requirements.

* * * * *

■ 13. Amend 98.40 by redesignating paragraph (a)(2) as (a)(3) and adding new paragraph (a)(2) to read as follows:

§ 98.40 Compliance with applicable State and local regulatory requirements.

(a) * * *

(2) Any exemptions to licensing requirements and a rationale for such exemptions;

* * * * *

■ 14. Amend § 98.41 by revising paragraphs (a)(1)(i), (a)(2), (a)(3), (d), and (e) to read as follows:

§ 98.41 Health and safety requirements.

(a) * * *

(1) * * *

(i) As part of their health and safety provisions in this area, Lead Agencies shall assure that children receiving services under the CCDF are age-appropriately immunized. Those health and safety provisions shall incorporate (by reference or otherwise) the latest recommendation for childhood immunizations of the respective State or territorial public health agency.

* * * * *

(2) Building and physical premises safety, which shall at a minimum include the following:

(i) Comprehensive background checks on child care providers that include use of fingerprints for State checks of criminal history records, use of fingerprints for checks of Federal Bureau of Investigation (FBI) criminal history records, clearance through the child abuse and neglect registry (if available) and clearance through sex offender registries (if available);

(ii) Compliance with applicable State and local fire, health and building codes, which must include ability to evacuate children in the case of an emergency. Compliance must be determined prior to child care providers

serving children receiving assistance under this part; and

(iii) Emergency preparedness and response planning including provisions for evacuation and relocation, shelter-in-place, and family reunification; and

(3) Minimum health and safety training appropriate to the provider setting and age of children served, which shall, at a minimum, include pre-service or orientation training in the following areas:

(i) First-aid and Cardiopulmonary Resuscitation (CPR);

(ii) Medication administration policies and practices;

(iii) Poison prevention and safety;

(iv) Safe sleep practices including Sudden Infant Death Syndrome (SIDS) prevention;

(v) Shaken baby syndrome and abusive head trauma prevention;

(vi) Age-appropriate nutrition, feeding, including support for breastfeeding, and physical activity;

(vii) Procedures for preventing the spread of infectious disease, including sanitary methods and safe handling of foods;

(viii) Recognition and reporting of suspected child abuse and neglect;

(ix) Emergency preparedness planning and response procedures;

(x) Management of common childhood illnesses, including food intolerances and allergies;

(xi) Transportation and child passenger safety (if applicable);

(xii) Caring for children with special health care needs, mental health needs, and developmental disabilities in compliance with the Americans with Disabilities (ADA) Act; and

(xiii) Child development, including knowledge of stages and milestones of all developmental domains appropriate for the ages of children receiving services.

* * * * *

(d) Each Lead Agency shall certify that procedures are in effect to ensure that child care providers of services for which assistance is provided under this part, within the area served by the Lead Agency, comply with all applicable State, local, or tribal health and safety requirements, including those described in paragraph (a) of this section. The Lead Agency's procedures:

(1) Must include unannounced on-site monitoring. All child care providers of services for which assistance is provided under this part must be subject to on-site monitoring, including unannounced visits;

(2) May not solely rely on child care provider self certification of compliance with health and safety requirements included in paragraph (a) of this section without documentation or other verification that requirements have been met;

(3) Must require an unannounced visit in response to the receipt of a complaint pertaining to the health and safety of children in the care of a provider of services for which assistance is provided under this part; and

(4) Must require child care providers of services for which assistance is provided under this part to report to a designated State, territorial, or tribal entity any serious injuries or deaths of children occurring in child care.

(e) For the purposes of this section only, the term ''child care providers,'' at the option of the Lead Agency, may not include in-home child care providers, pursuant to § 98.2, and grandparents, great grandparents, siblings (if such providers live in a separate residence), aunts or uncles, pursuant to § 98.2. If the Lead Agency chooses not to include these providers, the Lead Agency shall provide a description and justification in the CCDF Plan, pursuant to § 98.16(l), of requirements, if any, that apply to these providers.

■ 15. Amend § 98.42 by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 98.42 Sliding fee scales.

* * * * *

(c) Lead Agencies may waive contributions from families meeting criteria established by the Lead Agency.

(d) Lead Agencies may not use cost of care or subsidy payment rate as a factor in setting co-payment amounts.

■ 16. Amend § 98.43 by:

■ a. Revising paragraphs (b)(1) through (3);

■ b. Redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e) and (f); and;

■ c. Adding new paragraphs (b)(4) and (c),

The revisions and additions read as follows:

§ 98.43 Equal access.

* * * * *

(b) * * *

(1) How a choice of the full range providers, e.g. center, family, and in-home care, is made available;

(2) How payment rates are adequate based on either:

(i) a valid, local market price study conducted no earlier than two years prior to the effective date of the currently approved plan; or

(ii) an alternative methodology, such as a cost estimation model, that has been proposed by the Lead Agency and approved in advance by the Assistant Secretary;

(3) How copayments based on a sliding fee scale, as stipulated at § 98.42, are affordable; and

(4) Any additional facts the Lead Agency considered in determining that its payment rates ensure equal access, such as information on the cost of providing quality child care.

(c) The Lead Agency shall take into account the quality of child care when determining payment rates.

* * * * *

■ 17. Amend § 98.50 by revising paragraphs (a) and (b)(3) to read as follows:

§ 98.50 Child care services.

(a) Of the funds remaining after applying the provisions of paragraphs (c), (d), and (e) of this section the Lead Agency shall spend a substantial portion to provide direct child care services to low-income working families.

(b) * * *

(3) Using funding methods provided for in § 98.30, which must include some use of grants or contracts for the provision of direct services, with the extent of such services determined by the Lead Agency after consideration of supply shortages described in the Plan pursuant to § 98.16(i)(1) and other factors as determined by the Lead Agency; and

* * * * *

■ 18. Amend § 98.51 by revising paragraphs (a) introductory text and (a)(2) and adding paragraphs (d), (e), and (f) to read as follows:

§ 98.51 Activities to improve the quality of child care.

(a) No less than four percent of the aggregate funds expended by the Lead Agency from each fiscal year's allotment, and including the amounts expended in the State pursuant to § 98.53(b), shall be expended for quality activities.

* * * * *

(2) Activities to improve the quality of child care services may include, but are not limited to, implementation of a systemic framework for organizing, guiding, and measuring progress of quality improvement activities which includes the following key components:

(i) Activities to ensure the health and safety of children through licensing and health and safety standards pursuant to §§ 98.40 and 98.41;

(ii) Establishment and implementation of age-appropriate learning and development guidelines for children of all ages, including infants, toddlers, and school-age children;

(iii) Implementation of systems of quality improvement to evaluate,

improve and communicate the level of quality of child care programs that may contain the following elements:

(A) Establishment of program standards that define expectations for quality and indicators of different levels of quality appropriate to the provider setting;

(B) Provision of supports, training and technical assistance to assist child care programs in meeting child care quality improvement standards;

(C) Provision of financial incentives and monetary supports to assist child care programs in meeting child care quality improvement standards;

(D) Provision of quality assurance and monitoring to measure child care program quality over time; and

(E) Implementation of strategies for outreach and consumer education efforts to promote knowledge of child care quality improvement standards to child care programs and to provide parents, including parents receiving assistance under this part, with provider-specific information about the quality of child care provider options available to them, pursuant to § 98.33(b).

(iv) Implementation of professional development systems to ensure a well-qualified child care workforce that may contain the following elements:

(A) Establishment of core knowledge and competencies to define what the workforce should know (content) and be able to do (skills) in their role working with children and their families.

(B) Establishment of career pathways to define options and a sequence of qualifications and ongoing professional development opportunities;

(C) Conducting professional development assessments to build capacity of higher education systems and other training institutions to meet the diverse needs of the child care workforce and address the full range of development and needs of children;

(D) Provision of access to professional development to ensure practitioners are made aware of, and receive supports and assistance to utilize professional development opportunities; and

(E) Provision of rewards or financial supports to practitioners for participating in and completing education or training and for increased compensation;

(v) Implementation of an infrastructure of support to build child care provider capacity to promote health through wellness, physical activity and nutrition programs, to serve children with special needs, dual language learners, and other vulnerable children (e.g., children in the child welfare system and homeless children), to implement family engagement strategies;

(vi) Assessment and evaluation of the effectiveness of quality improvement activities; and

(vii) Any other activities consistent with the intent of this section.

* * * * *

(d) Activities to improve the quality of child care services are not restricted to activities affecting children meeting eligibility requirements under § 98.20 or to child care providers of services for which assistance is provided under this part.

(e) Unless expressly authorized by law, targeted funds for quality improvement and other activities that may be included in appropriations law may not count towards meeting the four percent minimum requirement in paragraph (a) of this section.

(f) The Lead Agency must include in the Plan a description of performance goals associated with expenditure of funds on activities to improve the quality of child care pursuant to the quality performance report described at § 98.16(v).

■ 19. Amend § 98.52 by adding paragraphs (d) and (e) to read as follows:

§ 98.52 Administrative costs.

* * * * *

(d) The following activities do not count towards the five percent limitation on administrative expenditures in paragraph (a) of this section:

(1) Establishment and maintenance of computerized child care information systems;

(2) Establishing and operating a certificate program;

(3) Eligibility determination;

(4) Preparation/participation in judicial hearings;

(5) Child care placement;

(6) Recruitment, licensing, inspection of child care providers;

(7) Training for Lead Agency or sub-recipient staff on billing and claims processes associated with the subsidy program;

(8) Reviews and supervision of child care placements;

(9) Activities associated with payment rate setting;

(10) Resource and referral services; and

(11) Training for child care staff.

(e) If a Lead Agency enters into agreements with sub-recipients for operation of the CCDF program, the amount of the contract or grant attributable to administrative activities as described at § 98.52(a) shall be counted towards the five percent limit.

■ 20. Revise § 98.54(b)(1) to read as follows:

§ 98.54 Restrictions on the use of funds.

* * * * *

(b) *Construction.* (1) For State and local agencies and nonsectarian agencies or organizations, no funds shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility. However, funds may be expended for minor remodeling, and for upgrading child care facilities to assure that providers meet State and local child care standards, including applicable health and safety requirements. Improvements or upgrades to a facility which are not specified under the definitions of construction or major renovation at § 98.2 may be considered minor remodeling and are, therefore, allowable.

* * * * *

■ 21. Amend § 98.60 by revising paragraph (b)(1), redesignating (d)(7) as paragraph (d)(8), and adding a new paragraph (d)(7), and revising paragraph (h) to read as follows:

§ 98.60 Availability of funds.

* * * * *

(b) * * *

(1) May withhold up to one half of one percent of the CCDF funds made available for a fiscal year for the provision of technical assistance; and

* * * * *

(d) * * *

(7) In instances where third party agencies issue child care certificates, the obligation of funds occurs upon entering into agreement through a subgrant or contract with such agency, rather than when the third party issues certificates to a family.

* * * * *

(h) Repayment of loans made to child care providers as part of quality improvement activities pursuant to § 98.51, may be made in cash or in services provided in-kind. Payment provided in-kind shall be based on fair market value. All loans shall be fully repaid.

* * * * *

■ 22. In § 98.61, add paragraph (f) to read as follows:

§ 98.61 Allotments from the Discretionary Fund.

* * * * *

(f) Lead Agencies shall expend any funds that may be set-aside for targeted activities pursuant to annual appropriations law as directed by the Secretary.

■ 23. Amend § 98.65 by revising paragraph (g) and adding paragraphs (h) and (i) to read as follows:

§ 98.65 Audits and financial reporting.

* * * * *

(g) The Secretary shall require financial reports as necessary. Lead Agencies shall submit financial reports to the Department in a manner specified by the Secretary quarterly for each fiscal year until funds are expended.

(h) At a minimum, a State or territorial Lead Agency's quarterly report shall include the following information on expenditures under CCDF grant funds, including Discretionary (which includes realloted funding and any funds transferred from the TANF block grant), Mandatory, and Matching funds (which includes redistributed funding); and State Matching and Maintenance-of-Effort (MOE) funds:

(1) Child care administration;

(2) Quality activities excluding targeted funds;

(3) Targeted funds identified in appropriations law;

(4) Direct services;

(5) Non-direct services, including:

(i) Systems,

(ii) Certificate program cost/eligibility determination;

(iii) All other non-direct services; and

(6) Such other information as specified by the Secretary;

(i) Tribal Lead Agencies shall submit financial reports annually.

■ 24. Add § 98.68 to subpart G to read as follows:

§ 98.68 Program integrity.

(a) Lead Agencies are required to have effective internal controls in place to ensure integrity and accountability in the CCDF program. These shall include:

(1) Processes to ensure sound fiscal management;

(2) Processes to identify areas of risk; and

(3) Regular evaluation of internal control activities.

(b) Lead Agencies are required to have processes in place to identify fraud or other program violations which may include, but are not limited to the following:

(1) Record matching and database linkages;

(2) Review of attendance and billing records;

(3) Quality control or quality assurance reviews; and

(4) Staff training on monitoring and audit processes.

(c) Lead Agencies must have procedures in place for documenting and verifying that children receiving assistance under this part meet eligibility criteria at the time of eligibility determination.

(d) Lead Agencies are required to have processes in place to investigate and recover fraudulent payments and to impose sanctions on clients or providers in response to fraud.

■ 25. Amend § 98.71 by redesignating paragraph (a)(15) as paragraph (a)(16) and adding a new paragraph (a)(15) to read as follows:

§ 98.71 Content of reports.

(a) * * *

(15) Indicator of the quality of the child care provider pursuant to § 98.33(b); and

* * * * *

■ 26. Amend § 98.81 by revising paragraph (b)(6) to read as follows:

§ 98.81 Application and Plan procedures.

* * * * *

(b) * * *

(6) The Plan is not subject to requirements in § 98.16(g)(8), (i)(1), or (i)(4).

■ 27. Amend § 98.83 by revising paragraphs (d), (f)(1), and (f)(2) and removing paragraph (f)(3) to read as follows:

§ 98.83 Requirements for tribal programs.

* * * * *

(d) Tribal Lead Agencies shall not be subject to the requirements at §§ 98.33(a), limited to the Web site requirement, 98.44(a), 98.50(b)(3), 98.50(e), 98.52(a), 98.53, and 98.63.

* * * * *

(f) * * *

(1) The assurance at § 98.15(a)(2); and

(2) The requirement for certificates at § 98.30(a) and (d).

* * * * *

■ 28. Amend § 98.100 by revising the second sentence in paragraph (b) to read as follows:

§ 98.100 Error Rate Report.

* * * * *

(b) * * * States, the District of Columbia and Puerto Rico must use this report to calculate their error rates, which is defined as the percentage of cases with an error (expressed as the total number of cases with an error compared to the total number of cases); the percentage of cases with an improper payment (expressed as the total number of cases with an improper payment compared to the total number of cases); the percentage of improper payments (expressed as the total amount of improper payments in the sample compared to the total dollar amount of payments made in the sample); and the average amount of improper payment. * * *

* * * * *

■ 29. Amend § 98.102 by:

■ a. Removing paragraph (a)(5);

■ b. Redesignating paragraphs (a)(6) through (10) as (a)(5) through (9); and

■ c. Adding paragraph (c).

The addition reads as follows:

§ 98.102 Content of Error Rate Reports

* * * * *

(c) Any Lead Agency with an improper payment rate that exceeds a threshold established by the Secretary must submit to the Assistant Secretary for approval a comprehensive corrective action plan, as well as subsequent reports describing progress in implementing the plan.

(1) The corrective action plan must be submitted within 60 days of the deadline for submitting the Lead Agency's standard error rate report required by § 98.102(b).

(2) The corrective action plan must include the following:

(i) Identification of a senior accountable official;

(ii) Milestones that clearly identify actions to be taken to reduce improper payments and the individual responsible for completing each action;

(iii) A timeline for completing each action within 1 year of the Assistant Secretary's approval of the plan, and for reducing the improper payment rate below the threshold established by the Secretary; and

(iv) Targets for future improper payment rates.

(3) Subsequent progress reports must be submitted as requested by the Assistant Secretary.

(4) Failure to carry out actions described in the approved corrective action plan will be grounds for a penalty or sanction under § 98.92.

* * * * *

§§ 98.16, 98.20, 98.30, 98.50, 98.51, 98.53, 98.81, and 98.102 [Amended]

■ 30. In the table below, for each section indicated in the left column, remove the cross-reference indicated in the middle column from wherever it appears in the section, and add the cross-reference indicated in the right column:

REDESIGNATION TABLE

Amended sections	Remove cross-reference citations	Add, in its place, new cross-reference citations
§ 98.16(r), as redesignated	§ 98.33(b)	§ 98.33(d).
§ 98.20(a)(3)((ii)(B)	§ 98.16(f)(7)	§ 98.16(g)(7).
§ 98.20(c), as redesignated	§ 98.16(g)(5)	§ 98.16(i)(5).
§ 98.30(e)(1)(iii), as redesignated	§ 98.16(g)(2)	§ 98.16(i)(2).
§ 98.50(f)	§ 98.16(g)(4)	§ 98.16(i)(4).
§ 98.51(b)	§ 98.16(h)	§ 98.16(j).
§ 98.53(f)	§ 98.16(c)(2)	§ 98.16(d)(2).
§ 98.53(h)(2)	§ 98.16(q)	§ 98.16(s).
§ 98.81(b)(5)	§ 98.16(g)(2)	§ 98.16(i)(2).
§ 98.81(b)(5)	§ 98.16(k)	§ 98.16(m).
§ 98.102(b)(2)	§ 98.102(a)(1) through (5)	§ 98.102(a)(1) through 4.

(Catalog of Federal Domestic Assistance Program Number 93.575, Child Care and Development Block Grant; 93.596, Child Care Mandatory and Matching Funds)

Dated: January 12, 2012.

George H. Sheldon,

Acting Assistant Secretary for Children and Families.

Approved: January 19, 2012.

Kathleen Sebelius,

Secretary.

Note: This document was received by the Office of the Federal Register on May 13, 2013.

[FR Doc. 2013–11673 Filed 5–16–13; 11:15 am]

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Part III

Department of Education

34 CFR Chapter II

Department of Health and Human Services

45 CFR Subtitle A, Subchapter A
Proposed Priorities, Requirements, Definitions, and Selection Criteria—Race to the Top – Early Learning Challenge; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Chapter II

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Subtitle A, Subchapter A

[Docket ID ED–2013–OESE–0046]

RIN 1801–AA13

Proposed Priorities, Requirements, Definitions, and Selection Criteria—Race to the Top—Early Learning Challenge

[CFDA Number: 84.412A.]

AGENCY: Department of Education and Department of Health and Human Services.

ACTION: Proposed priorities, requirements, definitions, and selection criteria.

SUMMARY: The Secretary of Education and Secretary of Health and Human Services (''the Secretaries'') propose priorities, requirements, definitions, and selection criteria under the Race to the Top—Early Learning Challenge (RTT–ELC) Grant program. The Secretaries may use one or more of these priorities, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2013 and later years.

The U.S. Department of Education (ED) and the U.S. Department of Health and Human Services (HHS) (collectively, ''the Departments'') conducted the first competition under the RTT–ELC program in FY 2011 and awarded grants to nine States. In FY 2012, the five next highest-rated applicants on the slate of high-scoring applications from the FY 2011 competition were funded at up to 50 percent of the funds each requested in their FY 2011 applications.

We propose to maintain the overall purpose and structure of the FY 2011 RTT–ELC competition in future competitions. These proposed priorities, requirements, definitions, and selection criteria are almost identical to the ones used in the FY 2011 competition. We describe the changes at the beginning of each section of this document.

DATES: We must receive your comments on or before June 19, 2013, and we encourage you to submit comments well in advance of this date.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. To ensure we do not receive duplicate comments, please submit your comments only once. In addition, please include the Docket ID and the term ''Early Learning Challenge Grant-Comments'' at the top of your comments.

Federal e-Rulemaking Portal: Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Are you new to the site?''

Postal Mail, Commercial Delivery, or Hand Delivery. If you mail or deliver your comments about these proposed priorities, requirements, definitions, or selection criteria, address them to the Office of Elementary and Secondary Education (Attention: Early Learning Challenge Grant—Comments), U.S. Department of Education, 400 Maryland Avenue SW., room 3E245, Washington, DC 20202–6200.

Privacy Note: The Departments' policies are to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov*. Therefore, commenters should be careful to include in their comments only information that they wish to make publically available.

FOR FURTHER INFORMATION CONTACT: Miriam Lund. Telephone: (202) 401–2871 or by email: *miriam.lund@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action: The purpose of this document is to propose priorities, requirements, definitions, and selection criteria for the RTT–ELC program that will enable effective grant making and result in high-quality proposals from States. The RTT–ELC program focuses Federal financial resources on improving early learning and development for young children by supporting States' efforts to increase the number and percentage of low-income and disadvantaged children in each age group of infants, toddlers, and preschoolers who are enrolled in high-quality early learning and development programs; design and implement an integrated system of high-quality early learning and development programs and services directly resulting in more children, especially those with high needs, entering kindergarten ready to succeed in school and in life; and ensure that any use of assessments conforms with the recommendations of the National Research Council [1] reports on early childhood.[2]

Summary of the Major Provisions of This Regulatory Action: The RTT–ELC program is designed to build on the momentum of other Race to the Top competitions by improving State systems of early care and education in order to prepare more children for kindergarten. The priorities, requirements, definitions, and selection criteria proposed in this document are almost identical to those we used in the FY 2011 competition. Through future competitions using these proposed priorities, requirements, definitions, and selection criteria, we will again invite applicants to demonstrate how they can transform their early learning systems with better coordination among various State Participating Agencies,[3] improved standards, and meaningful education and training for early childhood educators.

In that regard, through future competitions, the Department will encourage and reward States that have the leadership and vision to develop successful State systems that:

- Support an ambitious early learning and reform agenda;
- Align and raise standards for existing early learning programs, including Head Start, public preschool, childcare, home visiting, Part B, Section 619 and Part C programs under the Individuals with Disabilities Education Act (IDEA), and private preschools;
- Provide information to families about the quality of programs;
- Promote early learning and development outcomes across Essential Domains of School Readiness for all children, reflected in clear standards that detail what children should know and be able to do and are measured through comprehensive assessment systems;
- Build a great early childhood education workforce, supported by strategies to train, support, and retain high-quality teachers, providers, and administrators; and
- Measure outcomes and progress using Comprehensive Assessment

[1] National Research Council. (2008). Early Childhood Assessment: Why, What, and How. Committee on Developmental Outcomes and Assessments for Young Children, C.E. Snow and S.B. Van Hemel, Editors. Board on Children, Youth, and Families, Board on Testing and Assessment, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press. *www.nap.edu/catalog.php?record_id=12446.*

[2] See Department of Defense and Full-Year Continuing Appropriations Act, 2011, Division B, § 1832(b), Public Law 112–10 (April 15, 2011).

[3] Terms with initial capitalization are defined in the Definition section of this document.

Systems and Kindergarten Entry Assessments (KEA); and develop or enhance data systems.

These proposed priorities, requirements, definitions, and selection criteria are designed to help States meet these goals and are almost identical to those we used in the FY 2011 competition with the exception of minor language clarifications and five substantive changes. We are proposing to (1) Revise the KEA priority(Proposed Priority 3) to simplify scoring; (2) revise and rename the priority designed to sustain and build upon early learning outcomes from preschool-through-third grade (Proposed Priority 4); (3) revise the requirements to reduce the maximum grant amounts for which an applicant may apply;(4) revise the program requirements to require that States have an operational State Advisory Council on Early Childhood Education and Care, and that this council include the administrator from the State's Child Care and Development Fund program, representatives from both Part B and Part C of IDEA, and State agency representatives responsible for health and mental health; and (5)add a new eligibility requirement excluding States that previously received funding for a RTT–ELC grant.

We believe these proposed changes will improve the peer review evaluation; strengthen the gains from early learning outcomes from preschool through the early elementary school years; and enable the Departments to maximize the number of grantees that would receive funding while still awarding grants of sufficient size to support ambitious yet achievable early learning reforms.

The remaining priorities proposed in this notice (priorities 1, 2, and 5) are unchanged from those we used in the FY 2011 competition.

Costs and Benefits: The cost imposed on applicants by these priorities, requirements, definitions, and selection criteria would be limited to paperwork burden related to preparing an application. Benefits would outweigh any costs to applicants. The costs of carrying out activities would be paid for with RTT–ELC grant funds. The costs of implementation would not be a burden for any eligible applicant, including small entities. Please refer to the Regulatory Impact Analysis in this document for a more complete discussion of the costs and benefits of this regulatory action.

This document provides an accounting statement that estimates that approximately $300 million will transfer from the Federal Government to States under this program. Please refer to the accounting statement in this document for a more detailed discussion.

Invitation to Comment: We invite you to submit comments on this document. To ensure that your comments have maximum effect in developing the final priorities, requirements, definitions, and selection criteria, we urge you to identify clearly the specific proposed priority, requirement, definition, and or selection criterion that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, definitions, and selection criteria. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice by accessing Regulations.gov. You may also inspect the comments in person in room 3E245, 400 Maryland Avenue SW., LBJ Building, Washington, DC 20202–6200, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program

The purpose of the RTT–ELC program is to improve the quality of early learning and development and close the educational gaps for Children with High Needs. This program focuses on improving early learning and development for young children by supporting States' efforts to increase the number and percentage of low-income and disadvantaged children, in each age group of infants, toddlers, and preschoolers, who are enrolled in high-quality early learning and development programs; and to design and implement an integrated system of high-quality early learning and development programs and services.

Program Authority: Sections 14005 and 14006, Division A, of the American Recovery and Reinvestment Act of 2009, as amended by section 1832(b) of Division B of Pub. L. 112–10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011, and the Department of Education Appropriations Act, 2012 (Title III of Division F of Pub. L. 112–74, the Consolidated Appropriations Act, 2012).

Backgound

The Statutory Context and Program Overview

Race to the Top—Early Learning Challenge

A critical focus of the Departments is supporting America's youngest learners and helping ensure that children, especially Children with High Needs, enter kindergarten ready to succeed in school and in life. A robust body of research demonstrates that high-quality early learning and development programs and services can improve young children's health, social-emotional, and cognitive outcomes; enhance school readiness; and help close the educational gaps[4] [5] that exist between Children with High Needs and their peers at the time they enter kindergarten.[6] [7]

To address this educational gap, the Departments have identified, as high priorities, strengthening the quality of existing early learning and development programs and increasing access to high-quality Early Learning and Development Programs for all children, especially for Children with High Needs.

On May 25, 2011, Secretaries Arne Duncan and Kathleen Sebelius announced the RTT–ELC, a new $500 million State-level grant competition authorized under the American Recovery and Reinvestment Act of 2009 (ARRA), as amended by section 1832(b) of the Department of Defense and Full-Year Continuing Appropriations Act,

[4] Camilli, G., Vargas, S., Ryan, S., & Barnett, W. S. (2010). Meta-analysis of the effects of early education interventions on cognitive and social development. *Teachers College Record, 112*(3), 579–620.

[5] Reynolds, A.J., Temple, J.A., Ou, S., Arteaga, I.A., & White, B.A.B. (2011). School-based early childhood education and age-28 well-being: effects by timing, dosage, and subgroups. Science, Retrieved from *www.sciencemag.org/content/early/2011/06/08/science.1203618.abstract doi: 10.1126/science.1203618.*

[6] Princiotta, D., Flanagan, K. D., and Germino Hausken, E. (2006). *Fifth Grade: Findings From The Fifth-Grade Follow-up of the Early Childhood Longitudinal Study, Kindergarten Class of 1998–99 (ECLS–K). (NCES 2006–038) U.S. Department of Education.*

[7] Halle, T., Forry, N., Hair, E., Perper, K., Wandner, L., Wessel, J., & Vick, J.(2009). *Disparities in Early Learning and Development: Lessons from the Early Childhood Longitudinal Study—Birth Cohort (ECLS–B).* Washington, DC: Child Trends.

2011. Through the RTT–ELC program, the Departments seek to help close the educational gaps between Children with High Needs and their peers by supporting State efforts to build strong systems of early learning and development that provide increased access to high-quality programs for the children who need them most.

The FY 2011 RTT–ELC competition [8] represented an unprecedented opportunity for States to focus deeply on their early learning and development systems for children from birth through age five. (See notice inviting applications for the competition, published in the **Federal Register** on August 26, 2011 (76 FR 53564)). Through the FY 2011 RTT–ELC competition, States were given an opportunity to build a more unified approach to supporting young children and their families—an approach that increases access to high-quality early learning and development programs and services, and helps ensure that children enter kindergarten with the skills, knowledge, and dispositions toward learning they need to be successful in school and in life.

In December 2011, the Departments made awards to the nine highest-scoring applications from the FY 2011 RTT–ELC competition: California, Delaware, Maryland, Massachusetts, Minnesota, North Carolina, Ohio, Rhode Island, and Washington.

On December 23, 2011, Public Law 112–74, the Consolidated Appropriations Act, 2012, which made $550 million available for the Race to the Top Fund, was signed into law. This legislation authorized the Secretary of Education to make Race to the Top Fund awards on ''the basis of previously submitted applications.''

On April 9, 2012, the Departments announced that approximately $133 million of the $550 million appropriated for the Race to the Top Fund would be made available to the next five highest scoring applicants from the FY 2011 RTT–ELC competition. These five applicants, each of which received approximately 75 percent or more of the available points under the competition, received awards: Colorado, Illinois, New Mexico, Oregon, and Wisconsin.

The FY 2011 RTT–ELC competition identified five key reform areas representing the foundation of an effective early learning and development reform agenda focused on school readiness and ongoing educational success. These areas, which provided a framework for the competition's priorities, requirements, definitions, and selection criteria, are as follows:

(A) Successful State Systems;

(B) High-Quality, Accountable Programs;

(C) Promoting Early Learning and Development Outcomes for Children;

(D) A Great Early Childhood Education Workforce; and

(E) Measuring Outcomes and Progress.

The first two of these reform areas, (A) and (B), are core areas of focus for this program (''Core Areas''), and applicants under the FY 2011 RTT–ELC competition were required to respond to all selection criteria under these Core Areas. The reform areas in (C), (D), and (E) that targeted attention to specific activities are relevant to individual States (''Focused Investment Areas''). Applicants were required to address each Focused Investment Area but not each of the selection criteria under them.

In this notice, we propose specific priorities, requirements, definitions, and selection criteria that the Departments could choose to use in future competitions. The priorities, requirements, definitions, and selection criteria proposed in this notice are in large part identical to those in the FY 2011 notice inviting applications.

Proposed Priorities

Changes from the FY 2011 competition

Priority 3

We propose to revise Priority 3 by deleting sub-bullet (1). This change will simplify scoring by requiring all applicants to address the KEA in one location in the application: selection criterion (E)(1). The revised priority is: *''Understanding the Status of Children's Learning and Development at Kindergarten Entry.* To meet this priority, the State must, in its application address selection criterion (E)(1) and earn a score of at least 70 percent of the maximum points available for that criterion.''

The original priority for the reader's reference was: ''*Understanding the Status of Children's Learning and Development at Kindergarten Entry.*

—To meet this priority, the State must, in its application—

—Demonstrate that it has already implemented a Kindergarten Entry Assessment that meets selection criterion (E)(1) by indicating that all elements in Table (A)(1)-12 are met; or

—Address selection criterion (E)(1) and earn a score of at least 70 percent of the maximum points available for that criterion.''

Priority 4

We propose to revise Priority 4 to emphasize the importance of sustaining and building upon early learning outcomes from preschool through the early elementary school years. We propose this revision to improve all transitions for children across the birth-through-third-grade continuum and to encourage States to be focused on increasing the percentage of children able to read and do mathematics at grade level by the end of the third grade. The revised priority is: ''*Creating Approaches to Sustain Improved Early Learning Outcomes through the Early Elementary Grades.*

Priority 4 is designed to sustain and build upon early learning outcomes through the early elementary school years. To meet this priority, the State must have a High-Quality Plan to improve the overall quality, alignment, and continuity of teaching and learning to serve children from preschool through third grade by engaging in activities such as—

(a) Enhancing the State's kindergarten-through-third-grade standards to align them with the State's Early Learning and Development Standards across all Essential Domains of School Readiness;

(b) Identifying and addressing the health, behavioral, and developmental needs of Children with High Needs from preschool through third grade;

(c) Implementing teacher preparation and professional development programs and strategies that emphasize developmental science, pedagogy, and the delivery of developmentally appropriate content for teachers serving children from preschool through grade 3;

(d) Implementing model systems of collaboration both within and between early learning and development programs and elementary schools to improve all transitions for children across the birth through third grade continuum;

(e) Building or enhancing data systems to monitor the status of children's learning and development from preschool through third grade to support student progress in meeting critical educational benchmarks in the early elementary grades;

(f) Initiatives designed to increase the percentage of children who are able to

[8] Section 437(d)(1) of GEPA exempts the Secretary of Education from rulemaking requirements governing the first grant competition under a new or substantially revised program authority. We utilized this authority to forgo formal rulemaking for the FY2011 RTT–ELC competition, instead soliciting informal public participation through the ED.gov Web site.

read and do mathematics at grade level by the end of the third grade; and

(g) Leveraging existing Federal, State, and local resources, including but not limited to funds received under Title I and Title II of ESEA, as amended, and IDEA.''

The original priority for the reader's reference was: ''*Sustaining Program Effects in the Early Elementary Grades.*

The Departments are particularly interested in applications that describe the State's High-Quality Plan to sustain and build upon improved early learning outcomes throughout the early elementary school years, including by—

(a) Enhancing the State's current standards for kindergarten through grade 3 to align them with the Early Learning and Development Standards across all Essential Domains of School Readiness;

(b) Ensuring that transition planning occurs for children moving from Early Learning and Development Programs to elementary schools;

(c) Promoting health and family engagement, including in the early grades;

(d) Increasing the percentage of children who are able to read and do mathematics at grade level by the end of the third grade; and

(e) Leveraging existing Federal, State, and local resources, including but not limited to funds received under Title I and Title II of ESEA, as amended, and IDEA.''

Proposed Priorities: The Secretaries propose five priorities. The Departments may apply one or more of these priorities in any year in which a competition for program funds is held.

Priority 1: Promoting School Readiness for Children with High Needs.

To meet this proposed priority, the State's application must comprehensively and coherently address how the State will build a system that increases the quality of Early Learning and Development Programs for Children with High Needs so that they enter kindergarten ready to succeed.

The State's application must demonstrate how it will improve the quality of Early Learning and Development Programs by integrating and aligning resources and policies across Participating State Agencies and by designing and implementing a common, statewide Tiered Quality Rating and Improvement System. In addition, to achieve the necessary reforms, the State must make strategic improvements in those areas that will most significantly improve program quality and outcomes for Children with High Needs. Therefore, the State must address those criteria from within each of the Focused Investment Areas (sections (C) Promoting Early Learning and Development Outcomes for Children, (D) A Great Early Childhood Education Workforce, and (E) Measuring Outcomes and Progress) that it believes will best prepare its Children with High Needs for kindergarten success.

Priority 2: Including all Early Learning and Development Programs in the Tiered Quality Rating and Improvement System.

Proposed Priority 2 is designed to increase the number of children from birth to kindergarten entry who are participating in programs that are governed by the State's licensing system and quality standards, with the goal that all licensed or State-regulated programs will participate. The State will meet this priority based on the extent to which the State has in place, or has a High-Quality Plan to implement no later than June 30th of the fourth year of the grant—

(a) A licensing and inspection system that covers all programs that are not otherwise regulated by the State and that regularly care for two or more unrelated children for a fee in a provider setting; provided that if the State exempts programs for reasons other than the number of children cared for, the State may exclude those entities and reviewers will determine whether an applicant has met this priority only on the basis of non-excluded entities; and

(b) A Tiered Quality Rating and Improvement System in which all licensed or State-regulated Early Learning and Development Programs participate.

Priority 3: Understanding the Status of Children's Learning and Development at Kindergarten Entry.

To meet this proposed priority, the State must, in its application, address selection criterion (E)(1) and earn a score of at least 70 percent of the maximum points available for that criterion.

Priority 4: Creating Preschool through Third Grade Approaches to Sustain Improved Early Learning Outcomes through the Early Elementary Grades.

Proposed Priority 4 is designed to sustain and build upon early learning outcomes from preschool through the early elementary school years, including by leveraging existing Federal, State, and local resources. The State will meet this priority based on the extent to which it describes a High-Quality Plan to improve the overall quality, alignment, and continuity of teaching and learning to serve children from preschool through third grade through such activities as—

(a) Enhancing the State's kindergarten-through-third-grade standards to align them with the State's Early Learning and Development Standards across all Essential Domains of School Readiness;

(b) Identifying and addressing the health, behavioral, and developmental needs of Children with High Needs from preschool through third grade;

(c) Implementing teacher preparation and professional development programs and strategies that emphasize developmental science, pedagogy, and the delivery of developmentally appropriate content for teachers serving children from preschool through grade 3;

(d) Implementing model systems of collaboration both within and between early learning and development programs and elementary schools to improve all transitions for children across the birth through third grade continuum;

(e) Building or enhancing data systems to monitor the status of children's learning and development from preschool through third grade to support student progress in meeting critical educational benchmarks in the early elementary grades; and

(f) Other efforts designed to increase the percentage of children who are able to read and do mathematics at grade level by the end of the third grade.

Priority 5: Encouraging Private-Sector Support.

The State will meet this priority based on the extent to which it describes how the private sector will provide financial and other resources to support the State and its Participating State Agencies or Participating Programs in the implementation of the State Plan.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit

that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Eligibility Requirements

Changes from the FY 2011 competition

Eligibility Requirement 1(a)

We propose to eliminate the eligibility requirement requiring an operational State Advisory Council on Early Childhood Education and Care due to the elimination of Federal funding for this activity and the difficulty in determining whether a State has an operational State Advisory Council at the time of application. We have made this a program requirement instead, which will mean that the Council does not need to be operational at the time of application but must be reinstated or maintained throughout the grant period.

We also propose to add a new eligibility requirement excluding States that previously received funding for a RTT–ELC grant. This proposed eligibility requirement would increase the number of States with ambitious early learning reforms that promote early learning and development outcomes for all children.

The revised eligibility requirement is: The State has not previously received an RTT–ELC grant.

Eligibility Requirement (1)(c)

In eligibility requirement (1)(c), we propose a revision that states the applicant must have an active Maternal, Infant, and Early Childhood Home Visiting (MIECHV) program in the State. In the FY 2011 competition, we required applicants to have submitted their MIECHV plans for FY 2010 and an application for formula funding under the MIECHV program. However, we are proposing to update this requirement to reflect that all States that currently have an active MIECHV program would be eligible for funding.

The revised eligibility requirement is: ''(c) There must be an active Maternal, Infant, and Early Childhood Home Visiting (MIECHV) program in the State, either through the State under section 511(c) of Title V of the Social Security Act, as added by section 2951 of the Affordable Care Act of 2010 (Pub. L. 111–148), or through an eligible non-profit organization under section 511(h)(2)(B).)).

The original eligibility requirement for the reader's reference was: ''(c) The State must have submitted in FY 2010 an updated MIECHV State plan and FY 2011 Application for formula funding under the Maternal, Infant, and Early Childhood Home Visiting program (see section 511 of Title V of the Social Security Act, as added by section 2951 of the Affordable Care Act of 2010 (P.L. 111–148)).''

Proposed Eligibility Requirements: The Secretaries propose the following requirements a State must meet in order to be eligible to receive funds under this competition. We may apply one or more of these requirements in any year in which this program is in effect.

1. *Eligible Applicants:* States that meet the following requirements:

(a) The State has not previously received an RTT–ELC grant.

(b) The Lead Agency must have executed with each Participating State Agency a memorandum of understanding (MOU) or other binding agreement that the State must attach to its application, describing the Participating State Agency's level of participation in the grant. At a minimum, the MOU or other binding agreement must include an assurance that the Participating State Agency agrees to use, to the extent applicable—

(1) A set of statewide Early Learning and Development Standards;

(2) A set of statewide Program Standards;

(3) A statewide Tiered Quality Rating and Improvement System; and

(4) A statewide Workforce Knowledge and Competency Framework and progression of credentials.

(c) There must be an active Maternal, Infant, and Early Childhood Home Visiting (MIECHV) program in the State, either through the State under section 511(c) of Title V of the Social Security Act, as added by section 2951 of the Affordable Care Act of 2010 (Pub. L. 111–148), or through an eligible non-profit organization under section 511(h)(2)(B).

Proposed Application Requirements

Changes from the FY 2011 Competition: The Departments are not proposing any substantive changes to the application requirements that were included in the FY 2011 competition; however we made minor language changes for clarity.

The Secretaries propose the following application requirements for the application a State would submit for funding under this competition. We may apply one or more of these requirements in any year in which this program is in effect.

Each applicant must meet the following application requirements:

(a) The State's application must be signed by the Governor or an authorized representative; an authorized representative from the Lead Agency; and an authorized representative from each Participating State Agency.

(b) The State must submit a certification from the State Attorney General or an authorized representative that the State's description of, and statements and conclusions in its application concerning, State law, statute, and regulation are complete and accurate and constitute a reasonable interpretation of State law, statute, and regulation.

(c) The State must complete the budget spreadsheets that are provided in the application package and submit the completed spreadsheet as part of its application. These spreadsheets should be included on the CD or DVD that the State submits as its application.

(d) The State must submit preliminary scopes of work for each Participating State Agency as part of the executed MOU or other binding agreement. Each preliminary scope of work must describe the portions of the State's proposed plans that the Participating State Agency is agreeing to implement. If a State is awarded a RTT–ELC grant, the State will have up to 90 days to complete final scopes of work for each Participating State Agency.

(e) The State must include a budget that details how it will use grant funds awarded under this competition, and funds from other Federal, State, private, and local sources to achieve the outcomes of the State Plan (as described in proposed selection criterion (A)(4)(a)), and how the State will use funds awarded under this program to—

(1) Achieve its ambitious yet achievable targets for increasing the number and percentage of Early Learning and Development Programs that are participating in the State's Tiered Quality Rating and Improvement System (as described in selection criterion (B)(2)(c)); and

(2) Achieve its ambitious yet achievable targets for increasing the number and percentage of Children with High Needs who are enrolled in Early Learning and Development Programs that are in the top tiers of the State's Tiered Quality Rating and Improvement System (as described in selection criterion (B)(4)(c)).

(f) The State must provide an overall summary for the State Plan and a rationale for why it has chosen to address the selected criteria in each Focused Investment Area, including—

- How the State's choices build on its progress to date in each Focused Investment Area (as outlined in Tables

(A)(1) 6–13 and the narrative under (A)(1)); and

• Why these selected criteria will best achieve the State's ambitious yet achievable goals for improving program quality, improving outcomes for Children with High Needs statewide, and closing the educational gaps between Children with High Needs and their peers.

(g) The State, within each Focused Investment Area, must select and address—

• Two or more selection criteria within Focused Investment Area (C) Promoting Early Learning and Development Outcomes for Children; and

• One or more selection criteria within Focused Investment Areas (D) A Great Early Childhood Education Workforce and (E) Measuring Outcomes and Progress.

(h) Where the State is submitting a High-Quality Plan, the State must include in its application a detailed plan that is feasible and includes, but need not be limited to—

(1) The key goals;

(2) The key activities to be undertaken; the rationale for the activities; and, if applicable, where in the State the activities will be initially implemented, and where and how they will be scaled up over time to eventually achieve statewide implementation;

(3) A realistic timeline, including key milestones, for implementing each key activity;

(4) The party or parties responsible for implementing each activity and other key personnel assigned to each activity;

(5) Appropriate financial resources to support successful implementation of the plan;

(6) The information requested as supporting evidence, if any, together with any additional information the State believes will be helpful to peer reviewers in judging the credibility of the plan;

(7) The information requested or required in the performance measures, where applicable;

(8) How the State will address the needs of the different types of Early Learning and Development Programs, if applicable; and

(9) How the State will meet the unique needs of Children with High Needs.

Proposed Program Requirements

Changes From the FY 2011 Competition

Program Requirement (a)

In program requirement (a), we propose requiring States to have an operational State Advisory Council on Early Childhood Education and Care that meets the requirements described in section 642B(b) of the Head Start Act (42 U.S.C. 9837(b)). The coordinated system of early learning and development plays a unique and important role interweaving the work required by the RTT–ELC grant. In addition, the State Advisory Council on Early Childhood Education and Care must include the State's Child Care and Development Fund administrator; State agency coordinators from both Part B section 619 and Part C of IDEA, and State agency representatives responsible for health and mental health. These State agency representatives explicitly oversee the child care work in the States and their participation adds value and raises the bar because of their content knowledge on child care subsidy, quality, and Quality Rating and Improvement System development.

We further propose to reorganize this program requirement into three paragraphs. Paragraph (a) Will address the State Advisory Council on Early Childhood Education and Care, paragraph (b) will address the IDEA, Part B and Part C programs and the Child Care Development Program, and paragraph (c) will require States to have an active Maternal, Infant, and Early Childhood Home Visiting (MIECHV) program for the duration of the grant. The remaining paragraphs in this requirement will be redesignated accordingly. These proposed changes will ensure State agencies continue to meet throughout the duration of their grant to assess implementation of their early learning activities for infants, toddlers, and preschoolers.

The revised Program Requirements are: ''(a) The State must have an operational State Advisory Council on Early Childhood Education and Care that meets the requirements described in section 642B(b) of the Head Start Act (42 U.S.C. 9837(b)). In addition, the State Advisory Council on Early Childhood Education and Care must include the State's Child Care and Development Fund administrator, State agency coordinators from both Part B, section 619 and Part C of IDEA, and State agency representatives responsible for health and mental health;

(b) The State must continue to participate in the programs authorized under section 619 of Part B of IDEA and Part C of IDEA and in the Child Care Development Fund (CCDF) program.

(c) States must continue to have an active Maternal, Infant, and Early Childhood Home Visiting (MIECHV) program (pursuant to section 511 of Title V of the Social Security Act, as added by section 2951 of the Affordable Care Act of 2010 (Pub. L. 111–148)) for the duration of the grant, whether operated by the State or by an eligible non-profit organization.''

The original program requirements were: ''(a) The State must continue to participate in the programs authorized under section 619 of Part B of IDEA and Part C of IDEA; in the CCDF program; and in the Maternal, Infant, and Early Childhood Home Visiting (MIECHV) program (pursuant to section 511 of Title V of the Social Security Act, as added by section 2951 of the Affordable Care Act of 2010 (Pub. L. 111–148)) for the duration of the grant.''

Proposed Program Requirements: The Secretaries propose the following program requirements for States receiving funds under this competition. We may apply one or more of these requirements in any year in which this program is in effect.

(a) The State must have an operational State Advisory Council on Early Childhood Education and Care that meets the requirements described in section 642B(b) of the Head Start Act (42 U.S.C. 9837(b)). In addition, the State Advisory Council on Early Childhood Education and Care must include the State's Child Care and Development Fund administrator, State agency coordinators from both Part B section 619 and Part C of IDEA, and State agency representatives responsible for health and mental health.

(b) The State must continue to participate in the programs authorized under section 619 of Part B of IDEA and Part C of IDEA and in the CCDF program.

(c) States must continue to have an active Maternal, Infant, and Early Childhood Home Visiting (MIECHV) program (pursuant to section 511 of Title V of the Social Security Act, as added by section 2951 of the Affordable Care Act of 2010 (Pub. L. 111–148)) for the duration of the grant, whether operated by the State or by an eligible non-profit organization.

(d) The State is prohibited from spending funds from the grant on the direct delivery of health services.

(e) The State must participate in RTT–ELC grantee technical assistance activities facilitated by ED or HHS, individually or in collaboration with other State grantees in order to share effective program practices and solutions and collaboratively solve problems, and must set aside $400,000 from its grant funds for this purpose.

(f) The State must—

(1) Comply with the requirements of any evaluation sponsored by ED or HHS

of any of the State's activities carried out with the grant;

(2) Comply with the requirements of any cross-State evaluation—as part of a consortium of States—of any of the State's proposed reforms, if that evaluation is coordinated or funded by ED or HHS, including by using common measures and data collection instruments and collecting data necessary to the evaluation;

(3) Together with its independent evaluator, if any, cooperate with any technical assistance regarding evaluations provided by ED or HHS. The purpose of this technical assistance will be to ensure that the validation of the State's Tiered Quality Rating and Improvement System and any other evaluations conducted by States or their independent evaluators, if any, are of the highest quality and to encourage commonality in approaches where such commonality is feasible and useful;

(4) Submit to ED and HHS for review and comment its design for the validation of its Tiered Quality Rating and Improvement System (as described in selection criteria (B)(5)) and any other evaluations of activities included in the State Plan, including any activities that are part of the State's Focused Investment Areas, as applicable; and

(5) Make widely 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.

(g) The State must have a longitudinal data system that includes the 12 elements described in section 6401(e)(2)(D) of the America COMPETES Act by the date required under the State Fiscal Stabilization Fund (SFSF) grant and in accordance with Indicator (b)(1) of its approved SFSF plan.

(h) The State must comply with the requirements of all applicable Federal, State, and local privacy laws, including the requirements of the Family Educational Rights and Privacy Act, the Health Insurance Portability Accountability Act, and the privacy requirements in IDEA, and their applicable regulations.

(i) The State must ensure that the grant activities are implemented in accordance with all applicable Federal, State, and local laws.

(j) The State must provide researchers with access, consistent with the requirements of all applicable Federal State, and local privacy laws, to data from its Tiered Quality Rating and Improvement System and from the Statewide Longitudinal Data System and the State's coordinated early learning data system (if applicable) so that they can analyze the State's quality improvement efforts and answer key policy and practice questions.

(k) Unless otherwise protected as proprietary information by Federal or State law or a specific written agreement, the State must make any work (e.g., materials, tools, processes, systems) developed under its grant freely available to the public, including by posting the work on a Web site identified or sponsored by ED or HHS. Any Web sites developed under this grant must meet government or industry-recognized standards for accessibility (*www.section508.gov/*).

(l) Funds made available under an RTT–ELC grant must be used to supplement, not supplant, any Federal, State, or local funds that, in the absence of the funds awarded under this grant, would be available for increasing access to and improving the quality of Early Learning and Development Programs.

(m) For a State that is awarded an RTT–ELC grant, the State will have up to 90 days from the grant award notification date to complete final scopes of work for each Participating State Agency. These final scopes of work must contain detailed work plans that are consistent with their corresponding preliminary scopes of work and with the State's grant application, and must include the Participating State Agency's specific goals, activities, timelines, budgets, key personnel, and annual targets for key performance measures for the portions of the State's proposed plans that the Participating State Agency is agreeing to implement.

Proposed Budget Requirements

Changes From the FY 2011 competition

Budget Requirement

We propose reducing the funding band amounts from the FY 2011 levels to maximize the number of States that we can fund while providing each winning State with a large enough grant to support comprehensive plans. As in the FY 2011 competition, the Departments developed the following categories by ranking every State according to its share of the national population of children ages birth through five years old from Low-Income families and identifying the natural breaks in the rank order. Then, based on population, budget caps were developed for each category.[9]

[9] Source: U.S. Department of Commerce, Census Bureau, 2009. American Community Survey (ACS) 1-year Public Use Microdata Sample (PUMS) data.

Proposed Budget Requirements

The Secretaries propose the following budget requirements for States receiving funds under this competition. We may apply these requirements in any year in which this program is in effect.

Category 1—Up to $75 million—Florida, New York, Texas.

Category 2—Up to $52.5 million—Arizona, Georgia, Michigan, Pennsylvania.

Category 3—Up to $45 million—Alabama, Indiana, Kentucky, Louisiana, Missouri, New Jersey, Oklahoma, Puerto Rico, South Carolina, Tennessee, Virginia.

Category 4—Up to $37.5 million—Alaska, Arkansas, Connecticut, District of Columbia, Hawaii, Idaho, Iowa, Kansas, Maine, Mississippi, Montana, Nebraska, New Hampshire, Nevada, North Dakota, South Dakota, Utah, Vermont, West Virginia, Wyoming.

Proposed Definitions

Changes from the FY 2011 competition: The Departments are not proposing any substantive changes to the definitions used in the FY 2011 competition. We propose only minor changes were made to the definitions of the terms ''High Quality Plan'' and to ''Participating State Agency'' to provide clarity.

Proposed Definitions: The Secretaries propose the following definitions for this program. We may apply one or more of these definitions in any year in which this program is in effect.

Children with High Needs means children from birth through kindergarten entry who are from Low-Income families or otherwise in need of special assistance and support, including children who have disabilities or developmental delays; who are English learners; who reside on ''Indian lands'' as that term is defined by section 8013(6) of the ESEA; who are migrant, homeless, or in foster care; and other children as identified by the State.

Common Education Data Standards (CEDS) means voluntary, common standards for a key set of education data elements (e.g., demographics, program participation, transition, course information) at the early learning, K–12, and postsecondary levels developed through a national collaborative effort being led by the National Center for Education Statistics. CEDS focus on standard definitions, code sets, and technical specifications of a subset of key data elements and are designed to increase data interoperability, portability, and comparability across Early Learning and Development Programs and agencies, States, local

educational agencies, and postsecondary institutions.

Comprehensive Assessment System means a coordinated and comprehensive system of multiple assessments, each of which is valid and reliable for its specified purpose and for the population with which it will be used, that organizes information about the process and context of young children's learning and development in order to help Early Childhood Educators make informed instructional and programmatic decisions and that conforms to the recommendations of the National Research Council reports on early childhood.

A Comprehensive Assessment System includes, at a minimum—

(a) Screening Measures;

(b) Formative Assessments;

(c) Measures of Environmental Quality; and

(d) Measures of the Quality of Adult-Child Interactions.

Data System Oversight Requirements means policies for ensuring the quality, privacy, and integrity of data contained in a data system, including—

(a) A data governance policy that identifies the elements that are collected and maintained; provides for training on internal controls to system users; establishes who will have access to the data in the system and how the data may be used; sets appropriate internal controls to restrict access to only authorized users; sets criteria for determining the legitimacy of data requests; establishes processes that verify the accuracy, completeness, and age of the data elements maintained in the system; sets procedures for determining the sensitivity of each inventoried element and the risk of harm if those data were improperly disclosed; and establishes procedures for disclosure review and auditing; and

(b) A transparency policy that informs the public, including families, Early Childhood Educators, and programs, of the existence of data systems that house personally identifiable information, explains what data elements are included in such a system, enables parental consent to disclose personally identifiable information as appropriate, and describes allowable and potential uses of the data.

Early Childhood Educator means any professional working in an Early Learning and Development Program, including but not limited to center-based and family child care providers; infant and toddler specialists; early intervention specialists and early childhood special educators; home visitors; related services providers; administrators such as directors, supervisors, and other early learning and development leaders; Head Start teachers; Early Head Start teachers; preschool and other teachers; teacher assistants; family service staff; and health coordinators.

Early Learning and Development Program means any (a) State-licensed or State-regulated program or provider, regardless of setting or funding source, that provides early care and education for children from birth to kindergarten entry, including, but not limited to, any program operated by a child care center or in a family child care home; (b) preschool program funded by the Federal Government or State or local educational agencies (including any IDEA-funded program); (c) Early Head Start and Head Start program; and (d) a non-relative child care provider who is not otherwise regulated by the State and who regularly cares for two or more unrelated children for a fee in a provider setting. A State should include in this definition other programs that may deliver early learning and development services in a child's home, such as the Maternal, Infant and Early Childhood Home Visiting; Early Head Start; and Part C of IDEA.[10]

Early Learning and Development Standards means a set of expectations, guidelines, or developmental milestones that—

(a) Describe what all children from birth to kindergarten entry should know and be able to do and their disposition toward learning;

(b) Are appropriate for each age group (e.g., infants, toddlers, and preschoolers); for English learners; and for children with disabilities or developmental delays;

(c) Cover all Essential Domains of School Readiness; and

(d) Are universally designed and developmentally, culturally, and linguistically appropriate.

Early Learning Intermediary Organization means a national, statewide, regional, or community-based organization that represents one or more networks of Early Learning and Development Programs in the State and that has influence or authority over them. Such Early Learning Intermediary Organizations include, but are not limited to, Child Care Resource and Referral Agencies; State Head Start Associations; Family Child Care Associations; State affiliates of the National Association for the Education of Young Children; State affiliates of the Council for Exceptional Children's Division of Early Childhood; statewide or regional union affiliates that represent Early Childhood Educators; affiliates of the National Migrant and Seasonal Head Start Association; the National Tribal, American Indian, and Alaskan Native Head Start Association; and the National Indian Child Care Association.

Essential Data Elements means the critical child, program, and workforce data elements of a coordinated early learning data system, including—

(a) A unique statewide child identifier or another highly accurate, proven method to link data on that child, including Kindergarten Entry Assessment data, to and from the Statewide Longitudinal Data System and the coordinated early learning data system (if applicable);

(b) A unique statewide Early Childhood Educator identifier;

(c) A unique program site identifier;

(d) Child and family demographic information, including indicators identifying the criteria that States use to determine whether a child is a Child with High Needs;

(e) Early Childhood Educator demographic information, including data on educational attainment and State credential or licenses held, as well as professional development information;

(f) Program-level data on the program's structure, quality, child suspension and expulsion rates, staff retention, staff compensation, work environment, and all applicable data reported as part of the State's Tiered Quality Rating and Improvement System; and

(g) Child-level program participation and attendance data.

Essential Domains of School Readiness means the domains of language and literacy development, cognition and general knowledge (including early mathematics and early scientific development), approaches toward learning, physical well-being and motor development (including adaptive skills), and social and emotional development.

Formative Assessment (also known as a classroom-based or ongoing assessment) means assessment questions, tools, and processes—

(a) That are—

(1) Specifically designed to monitor children's progress in meeting the Early Learning and Development Standards;

(2) Valid and reliable for their intended purposes and their target populations; and

[10] *Note:* Such home-based programs and services will most likely not participate in the State's Tiered Quality Rating and Improvement System unless the State has developed a set of Tiered Program Standards specifically for home-based programs and services.

(3) Linked directly to the curriculum; and

(b) The results of which are used to guide and improve instructional practices.

High-Quality Plan means any plan developed by the State to address a selection criterion or priority in this notice that is feasible and has a high probability of successful implementation and at a minimum includes—

(a) The key goals;

(b) The key activities to be undertaken; the rationale for the activities; and, if applicable, where in the State the activities will be initially implemented, and where and how they will be scaled up over time to eventually achieve statewide implementation;

(c) A realistic timeline, including key milestones, for implementing each key activity;

(d) The party or parties responsible for implementing each activity and other key personnel assigned to each activity;

(e) Appropriate financial resources to support successful implementation of the plan;

(f) The information requested as supporting evidence, if any, together with any additional information the State believes will be helpful to peer reviewers in judging the credibility of the plan;

(g) The information requested in the performance measures, where applicable;

(h) How the State will address the needs of the different types of Early Learning and Development Programs, if applicable; and

(i) How the State will meet the needs of Children with High Needs.

Kindergarten Entry Assessment means an assessment that—

(a) Is administered to children during the first few months of their admission into kindergarten;

(b) Covers all Essential Domains of School Readiness;

(c) Is used in conformance with the recommendations of the National Research Council[11] reports on early childhood; and

(d) Is valid and reliable for its intended purposes and for the target populations and aligned to the Early Learning and Development Standards.

Results of the assessment should be used to inform efforts to close the school readiness gap at kindergarten entry and to inform instruction in the early elementary school grades. This assessment should not be used to prevent children's entry into kindergarten.

Lead Agency means the State-level agency designated by the Governor for the administration of the RTT–ELC grant; this agency is the fiscal agent for the grant. The Lead Agency must be one of the Participating State Agencies.

Low-Income means having an income of up to 200 percent of the Federal poverty rate.

Measures of Environmental Quality means valid and reliable indicators of the overall quality of the early learning environment.

Measures of the Quality of Adult-Child Interactions means the measures obtained through valid and reliable processes for observing how teachers and caregivers interact with children, where such processes are designed to promote child learning and to identify strengths and areas for improvement for early learning professionals.

Participating State Agency means a State agency that administers public funds related to early learning and development and is participating in the State Plan. The following State agencies are required Participating State Agencies: the agencies that administer or supervise the administration of CCDF, the section 619 of Part B of IDEA and Part C of IDEA programs, State-funded preschool, home visiting, Title I of ESEA, the Head Start State Collaboration Grant, and the Title V Maternal and Child Care Block Grant, the State's Child Care Licensing Agency, and the State Education Agency. Other State agencies, such as the agencies that administer or supervise the administration of Child Welfare, Mental Health, Temporary Assistance for Needy Families (TANF), Community-Based Child Abuse Prevention, the Child and Adult Care Food Program, and the Adult Education and Family Literacy Act (AEFLA) may be Participating State Agencies if they elect to participate in the State Plan as well as the State Advisory Council on Early Childhood Education and Care.

Participating Program means an Early Learning and Development Program that elects to carry out activities described in the State Plan.

Program Standards means the standards that serve as the basis for a Tiered Quality Rating and Improvement System and define differentiated levels of quality for Early Learning and Development Programs. Program Standards are expressed, at a minimum, by the extent to which—

(a) Early Learning and Development Standards are implemented through evidence-based activities, interventions, or curricula that are appropriate for each age group of infants, toddlers, and preschoolers;

(b) Comprehensive Assessment Systems are used routinely and appropriately to improve instruction and enhance program quality by providing robust and coherent evidence of—

(1) Children's learning and development outcomes; and

(2) Program performance;

(c) A qualified workforce improves young children's health, social, emotional, and educational outcomes;

(d) Strategies are successfully used to engage families in supporting their children's development and learning. These strategies may include, but are not limited to, parent access to the program, ongoing two-way communication with families, parent education in child development, outreach to fathers and other family members, training and support for families as children move to preschool and kindergarten, social networks of support, intergenerational activities, linkages with community supports and adult and family literacy programs, parent involvement in decision making, and parent leadership development;

(e) Health promotion practices include health and safety requirements; developmental, behavioral, and sensory screening, referral, and follow up; and the promotion of physical activity, healthy eating habits, oral health and behavioral health, and health literacy among parents; and

(f) Effective data practices include gathering Essential Data Elements and entering them into the State's Statewide Longitudinal Data System or other early learning data system, using these data to guide instruction and program improvement, and making this information readily available to families.

Screening Measures means age and developmentally appropriate, valid, and reliable instruments that are used to identify children who may need follow-up services to address developmental, learning, or health needs in, at a minimum, the areas of physical health, behavioral health, oral health, child development, vision, and hearing.

State means any of the 50 States, the District of Columbia, and Puerto Rico.

State Plan means the plan submitted as part of the State's RTT–ELC application.

[11] National Research Council. (2008). *Early Childhood Assessment: Why, What, and How.* Committee on Developmental Outcomes and Assessments for Young Children, C.E. Snow and S.B. Van Hemel, Editors. Board on Children, Youth, and Families, Board on Testing and Assessment, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press. *www.nap.edu/catalog.php?record_id=12446.*

Statewide Longitudinal Data System means the State's longitudinal education data system that collects and maintains detailed, high-quality, student- and staff-level data that are linked across entities and that over time provide a complete academic and performance history for each student. The Statewide Longitudinal Data System is typically housed within the State educational agency but includes or can be connected to early childhood, postsecondary, and labor data.

Tiered Quality Rating and Improvement System means the system through which the State uses a set of progressively higher Program Standards to evaluate the quality of an Early Learning and Development Program and to support program improvement. A Tiered Quality Rating and Improvement System consists of four components: (a) Tiered Program Standards with multiple rating categories that clearly and meaningfully differentiate program quality levels; (b) monitoring to evaluate program quality based on the Program Standards; (c) supports to help programs meet progressively higher standards (e.g., through training, technical assistance, financial support); and (d) program quality ratings that are publically available; and includes a process for validating the system.

Workforce Knowledge and Competency Framework means a set of expectations that describes what Early Childhood Educators (including those working with children with disabilities and English learners) should know and be able to do. The Workforce Knowledge and Competency Framework, at a minimum, (a) Is evidence-based; (b) incorporates knowledge and application of the State's Early Learning and Development Standards, the Comprehensive Assessment Systems, child development, health, and culturally and linguistically appropriate strategies for working with families; (c) includes knowledge of early mathematics and literacy development and effective instructional practices to support mathematics and literacy development in young children; (d) incorporates effective use of data to guide instruction and program improvement; (e) includes effective behavior management strategies that promote positive social emotional development and reduce challenging behaviors; and (f) incorporates feedback from experts at the State's postsecondary institutions and other early learning and development experts and Early Childhood Educators.

Proposed Selection Criteria

Changes from the FY 2011 competition

Selection Criteria A(1)(a); A(1)(b); and (E)(1)(c)

Regarding selection criteria A(1)(a), A(1)(b), and (E)(1)(c), we propose two minor changes for the purpose of demonstrating past commitment. *Successful State Systems* selection criteria A(1)(a) and A(1)(b) have been updated to remove the reference to ''January 2007'' and change it to ''the previous five years.'' Additionally, in the *Measuring Outcomes and Process* selection criterion (E)(1)(c), we have updated the school year referenced from ''2014–2015'' to ''ending during the fourth year of the grant.''

Selection Criteria (D)(2)(a)

In *A Great Early Childhood Education Workforce* selection criterion (D)(2)(a), additional language was added requiring proposed professional development opportunities be supported by evidence (e.g., evaluations, developmental theory, or data or information) demonstrating improved outcomes for Children with High Needs.

The revised selection criterion is: (a) Providing and expanding access to effective professional development opportunities that—

(1) Are aligned with the State's Workforce Knowledge and Competency Framework;

(2) Tightly link training with professional development approaches, such as coaching and mentoring; and

(3) Are supported by strong evidence (e.g. available evaluations, developmental theory, and/or data or information) as to why these policies and incentives will be effective in improving outcomes for Children with High Needs.

The original selection criterion for the reader's reference was: ''(a) Providing and expanding access to effective professional development opportunities that are aligned with the State's Workforce Knowledge and Competency Framework;''.

Selection Criterion (D)(2)(b)

Additional language has been incorporated into selection criterion (D)(2)(b) of criteria (D)(2) *Supporting Early Childhood Educators in improving their knowledge, skills, and abilities.* The new language would require strong evidence as to why these policies and incentives will be effective in improving child outcomes.

The revised selection criterion is: (b) Implementing effective policies and incentives (e.g., scholarships, compensation and wage supplements, tiered reimbursement rates, other financial incentives, management opportunities) to promote professional improvement and career advancement along an articulated career pathway that—

(1) Are aligned with the State's Workforce Knowledge and Competency Framework;

(2) Tightly link training with professional development approaches, such as coaching and mentoring; and

(3) Are supported by strong evidence (e.g. available evaluations, developmental theory, or data or information) as to why these policies and incentives will be effective in improving outcomes for Children with High Needs.

The original selection criterion for the reader's reference was: (b) Implementing policies and incentives (e.g., scholarships, compensation and wage supplements, tiered reimbursement rates, other financial incentives, management opportunities) that promote professional improvement and career advancement along an articulated career pathway that is aligned with the Workforce Knowledge and Competency Framework, and that are designed to increase retention.

Proposed Selection Criteria

The Secretaries propose the following selection criteria for evaluating an application under this program. We may apply one or more of these criteria in any year in which this program is in effect. The Secretaries propose that they may use:

- One or more of the selection criteria established in the notice of final priorities, requirements, definitions, and selection criteria;
- Any of the selection criteria in 34 CFR 75.210;
- Criteria based on the statutory requirements for the RTT–ECL program in accordance with 34 CFR 75.209; or
- Any combination of these when establishing selection criteria for any RTT–ELC competition.

The Secretaries propose that they may further define each criterion by selecting specific factors for it. The Secretaries may select these factors from any selection criterion in the list below. In the notice inviting applications, the application package, or both we will announce the specific selection criteria that apply to a competition and the maximum possible points assigned to each criterion.

Core Areas—Sections (A) (Successful State Systems) and (B) (High-Quality, Accountable Programs) States must

address in their application all of the selection criteria in the Core Areas.

A. Successful State Systems

(A)(1) Demonstrating past commitment to early learning and development.

The extent to which the State has demonstrated past commitment to and investment in high-quality, accessible Early Learning and Development Programs and services for Children with High Needs, as evidenced by the State's—

(a) Financial investment, from five years ago to the present, in Early Learning and Development Programs, including the amount of these investments in relation to the size of the State's population of Children with High Needs during this time period;

(b) Increasing, from the previous five years to the present, the number of Children with High Needs participating in Early Learning and Development Programs;

(c) Existing early learning and development legislation, policies, or practices; and

(d) Current status in key areas that form the building blocks for a high quality early learning and development system, including Early Learning and Development Standards, Comprehensive Assessment Systems, health promotion practices, family engagement strategies, the development of Early Childhood Educators, Kindergarten Entry Assessments, and effective data practices.

Evidence for (A)(1):

- The number and percentage of children from Low-Income families in the State, by age;
- The number and percentage of Children with High Needs from special populations in the State; and
- The number of Children with High Needs in the State who are enrolled in Early Learning and Development Programs, by age.
- Data currently available, if any, on the status of children at kindergarten entry (across Essential Domains of School Readiness, if available), including data on the readiness gap between Children with High Needs and their peers.
- Data currently available, if any, on program quality across different types of Early Learning and Development Programs.
- The number of Children with High Needs participating in each type of Early Learning and Development Program for each of the previous five years to the present.
- The number of Children with High Needs participating in each type of Early Learning and Development Program for each of the previous five years to the present.
- The current status of the State's Early Learning and Development Standards, for each of the Essential Domains of School Readiness, by age group of infants, toddlers, and preschoolers.
- The elements of a Comprehensive Assessment System currently required within the State by different types of Early Learning and Development Programs or systems.
- The elements of high-quality health promotion practices currently required within the State by different types of Early Learning and Development Programs or systems.
- The elements of a high-quality family engagement strategy currently required within the State by different types of Early Learning and Development Programs or systems.
- All early learning and development workforce credentials currently available in the State, including whether credentials are aligned with a State Workforce Knowledge and Competency Framework and the number and percentage of Early Childhood Educators who have each type of credential.
- The current status of postsecondary institutions and other professional development providers in the State that issue credentials or degrees to Early Childhood Educators.
- The current status of the State's Kindergarten Entry Assessment.
- All early learning and development data systems currently used in the State.

Performance Measures for (A)(1):

- None required.

(A)(2) Articulating the State's rationale for its early learning and development reform agenda and goals.

The extent to which the State clearly articulates a comprehensive early learning and development reform agenda that is ambitious yet achievable, builds on the State's progress to date (as demonstrated in selection criterion (A)(1)), is likely to result in improved school readiness for Children with High Needs, and includes—

(a) Ambitious yet achievable goals for improving program quality, improving outcomes for Children with High Needs statewide, and closing the educational gaps between Children with High Needs and their peers;

(b) An overall summary of the State Plan that clearly articulates how the High-Quality Plans proposed under each selection criterion, when taken together, constitute an effective reform agenda that establishes a clear and credible path toward achieving these goals; and

(c) A specific rationale that justifies the State's choice to address the selected criteria in each Focused Investment Area (C), (D), and (E), including why these selected criteria will best achieve these goals.

Evidence for (A)(2):

- The State's goals for improving program quality statewide over the period of this grant.
- The State's goals for improving child outcomes statewide over the period of this grant.
- The State's goals for closing the readiness gap between Children with High Needs and their peers at kindergarten entry.
- Identification of the two or more selection criteria that the State has chosen to address in Focused Investment Area (C).
- Identification of the one or more selection criteria that the State has chosen to address in Focused Investment Area (D).
- Identification of the one or more selection criteria that the State has chosen to address in Focused Investment Area (E).
- For each Focused Investment Area (C), (D), and (E), a description of the State's rationale for choosing to address the selected criteria in that Focused Investment Area, including how the State's choices build on its progress to date in each Focused Investment Area (as outlined in the narrative under (A)(1) in the application) and why these selected criteria will best achieve the State's ambitious yet achievable goals for improving program quality, improving outcomes for Children with High Needs statewide, and closing the educational gap between Children with High Needs and their peers.

Performance Measures for (A)(2):

- None required.

(A)(3) Aligning and coordinating early learning and development across the State.

The extent to which the State has established, or has a High-Quality Plan to establish, strong participation in and commitment to the State Plan by Participating State Agencies and other early learning and development stakeholders by—

(a) Demonstrating how the Participating State Agencies and other partners, if any, will identify a governance structure for working together that will facilitate interagency coordination, streamline decision making, effectively allocate resources, and create long-term sustainability, and describing—

(1) The organizational structure for managing the grant and how it builds upon existing interagency governance structures such as children's cabinets, councils, and commissions, if any already exist and are effective;

(2) The governance-related roles and responsibilities of the Lead Agency, the State Advisory Council on Early Childhood Education and Care, each Participating State Agency, and the State's Interagency Coordinating Council for Part C of IDEA, and other partners, if any;

(3) The method and process for making different types of decisions (e.g., policy, operational) and resolving disputes; and

(4) The plan for when and how the State will involve representatives from Participating Programs, Early Childhood Educators or their representatives, parents and families, including parents and families of Children with High Needs, and other key stakeholders in the planning and implementation of the activities carried out under the grant;

(b) Demonstrating that the Participating State Agencies are strongly committed to the State Plan, to the governance structure of the grant, and to effective implementation of the State Plan, by including in the MOUs or other binding agreements between the State and each Participating State Agency—

(1) Terms and conditions that reflect a strong commitment to the State Plan by each Participating State Agency, including terms and conditions designed to align and leverage the Participating State Agencies' existing funding to support the State Plan;

(2) ''Scope-of-work'' descriptions that require each Participating State Agency to implement all applicable portions of the State Plan and a description of efforts to maximize the number of Early Learning and Development Programs that become Participating Programs; and

(3) A signature from an authorized representative of each Participating State Agency; and

(c) Demonstrating commitment to the State Plan from a broad group of stakeholders that will assist the State in reaching the ambitious yet achievable goals outlined in response to selection criterion (A)(2)(a), including by obtaining—

(1) Detailed and persuasive letters of intent or support from Early Learning Intermediary Organizations, and, if applicable, local early learning councils; and

(2) Letters of intent or support from such other stakeholders as Early Childhood Educators or their representatives; the State's legislators; local community leaders; State or local school boards; representatives of private and faith-based early learning programs; other State and local leaders (e.g., business, community, tribal, civil rights, education association leaders); adult education and family literacy State and local leaders; family and community organizations; representatives from the disability community, the English learner community, and entities representing other Children with High Needs(e.g., parent councils, nonprofit organizations, local foundations, tribal organizations, and community-based organizations); libraries and children's museums; health providers; and postsecondary institutions.

Evidence for (A)(3) (a) and (b):

- For (A)(3)(a)(1): An organizational chart that shows how the grant will be governed and managed.
- Governance-related roles and responsibilities.
- A copy of all fully executed MOUs or other binding agreements that cover each Participating State Agency. (MOUs or other binding agreements should be referenced in the narrative but must be included in the Appendix to the application).

Evidence for (A)(3)(c)(1):

- A list of every Early Learning Intermediary Organization and local early learning council (if applicable) in the State that indicates which organizations and councils have submitted letters of intent or support.
- A copy of every letter of intent or support from Early Learning Intermediary Organizations and local early learning councils.

Evidence for (A)(3)(c)(2):

- A copy of every letter of intent or support from other stakeholders.

Performance Measures for (A)(3):

- None required.

(A)(4) Developing a budget to implement and sustain the work of this grant.

The extent to which the State Plan—

(a) Demonstrates how the State will use existing funds that support early learning and development from Federal, State, private, and local sources (e.g., CCDF; Title I and II of ESEA; IDEA; Striving Readers Comprehensive Literacy Program; State preschool; Head Start Collaboration funding; Maternal, Infant, and Early Childhood Home Visiting Program; Title V MCH Block Grant; TANF; Medicaid; child welfare services under Title IV (B) and (E) of the Social Security Act; Statewide Longitudinal Data System; foundation; other private funding sources) for activities and services that help achieve the outcomes in the State Plan, including how the quality set-asides in CCDF will be used;

(b) Describes, in both the budget tables and budget narratives, how the State will effectively and efficiently use funding from this grant to achieve the outcomes in the State Plan, in a manner that—

(1) Is adequate to support the activities described in the State Plan;

(2) Includes costs that are reasonable and necessary in relation to the objectives, design, and significance of the activities described in the State Plan and the number of children to be served; and

(3) Details the amount of funds budgeted for Participating State Agencies, localities, Early Learning Intermediary Organizations, Participating Programs, or other partners, and the specific activities to be implemented with these funds consistent with the State Plan, and demonstrates that a significant amount of funding will be devoted to the local implementation of the State Plan; and

(c) Demonstrates that it can be sustained after the grant period ends to ensure that the number and percentage of Children with High Needs served by Early Learning and Development Programs in the State will be maintained or expanded.

Evidence for (A)(4)(a):

- The existing funds to be used to achieve the outcomes in the State Plan.
- Description of how these existing funds will be used for activities and services that help achieve the outcomes in the State Plan.

Evidence for (A)(4)(b):

- The State's budget.
- The narratives that accompany and explain the budget, and describes how it connects to the State Plan.

Performance Measures for (A)(4):

- None required.

B. High-Quality, Accountable Programs

(B)(1) Developing and adopting a common, statewide Tiered Quality Rating and Improvement System.

The extent to which the State and its Participating State Agencies have developed and adopted, or have a High-Quality Plan to develop and adopt, a Tiered Quality Rating and Improvement System that—

(a) Is based on a statewide set of tiered Program Standards that include—

(1) Early Learning and Development Standards;

(2) A Comprehensive Assessment System;

(3) Early Childhood Educator qualifications;

(4) Family engagement strategies;

(5) Health promotion practices; and

(6) Effective data practices;

(b) Is clear and has standards that are measurable, meaningfully differentiate

program quality levels, and reflect high expectations of program excellence commensurate with nationally recognized standards that lead to improved learning outcomes for children; and

(c) Is linked to the State licensing system for Early Learning and Development Programs.

Evidence for (B)(1):

- Each set of existing Program Standards currently used in the State and the elements that are included in those Program Standards (Early Learning and Development Standards, Comprehensive Assessment Systems, Qualified Workforce, Family Engagement, Health Promotion, Effective Data Practices, and Other).
- To the extent the State has developed and adopted a Tiered Quality Rating and Improvement System based on a common set of tiered Program Standards that meet the elements in criterion (B)(1)(a), submit—
  - ○ A copy of the tiered Program Standards;
  - ○ Documentation that the Program Standards address all areas outlined in the definition of Program Standards, demonstrate high expectations of program excellence commensurate with nationally recognized standards, and are linked to the States licensing system; and
  - ○ Documentation of how the tiers meaningfully differentiate levels of quality.

Performance Measures for (B)(1):

- None required.

(B)(2) Promoting Participation in the State's Tiered Quality Rating and Improvement System.

The extent to which the State has maximized, or has a High-Quality Plan to maximize, program participation in the State's Tiered Quality Rating and Improvement System by—

(a) Implementing effective policies and practices to reach the goal of having all publicly funded Early Learning and Development Programs participate in such a system, including programs in each of the following categories—

(1) State-funded preschool programs;

(2) Early Head Start and Head Start programs;

(3) Early Learning and Development Programs funded under section 619 of Part B of IDEA and Part C of IDEA;

(4) Early Learning and Development Programs funded under Title I of the ESEA; and

(5) Early Learning and Development Programs receiving funds from the State's CCDF program;

(b) Implementing effective policies and practices designed to help more families afford high-quality child care and maintain the supply of high-quality child care in areas with high concentrations of Children with High Needs (e.g., maintaining or increasing subsidy reimbursement rates, taking actions to ensure affordable co-payments, providing incentives to high-quality providers to participate in the subsidy program); and

(c) Setting ambitious yet achievable targets for the numbers and percentages of Early Learning and Development Programs that will participate in the Tiered Quality Rating and Improvement System by type of Early Learning and Development Program (as listed in (B)(2)(a)(1) through (5) above).

Evidence for (B)(2):

- Any supporting evidence the State believes will be helpful to peer reviewers.

Performance Measures for (B)(2)(c):

General goals to be provided at time of application, including baseline data and annual targets:

- Number and percentage of Early Learning and Development Programs participating in the statewide Tiered Quality Rating and Improvement System, by type of Early Learning and Development Program.

(B)(3) Rating and monitoring Early Learning and Development Programs.

The extent to which the State and its Participating State Agencies have developed and implemented, or have a High-Quality Plan to develop and implement, a system for rating and monitoring the quality of Early Learning and Development Programs participating in the Tiered Quality Rating and Improvement System by—

(a) Using a valid and reliable tool for monitoring such programs, having trained monitors whose ratings have an acceptable level of inter-rater reliability, and monitoring and rating the Early Learning and Development Programs with appropriate frequency; and

(b) Providing quality rating and licensing information to parents with children enrolled in Early Learning and Development Programs (e.g., displaying quality rating information at the program site) and making program quality rating data, information, and licensing history (including any health and safety violations) publicly available in formats that are written in plain language, and are easy to understand and use for decision making by families selecting Early Learning and Development Programs and families whose children are enrolled in such programs.

Evidence for (B)(3):

- Any supporting evidence the State believes will be helpful to peer reviewers.

Performance Measures for (B)(3):

- None required.

(B)(4) Promoting access to high-quality Early Learning and Development Programs for Children with High Needs.

The extent to which the State and its Participating State Agencies have developed and implemented, or have a High-Quality Plan to develop and implement, a system for improving the quality of the Early Learning and Development Programs participating in the Tiered Quality Rating and Improvement System by—

(a) Developing and implementing policies and practices that provide support and incentives for Early Learning and Development Programs to continuously improve (e.g., through training, technical assistance, financial rewards or incentives, higher subsidy reimbursement rates, compensation);

(b) Providing supports to help working families who have Children with High Needs access high-quality Early Learning and Development Programs that meet those needs (e.g., providing full-day, full-year programs; transportation; meals; family support services); and

(c) Setting ambitious yet achievable targets for increasing—

(1) The number of Early Learning and Development Programs in the top tiers of the Tiered Quality Rating and Improvement System; and

(2) The number and percentage of Children with High Needs who are enrolled in Early Learning and Development Programs that are in the top tiers of the Tiered Quality Rating and Improvement System.

Evidence for (B)(4):

- Any supporting evidence the State believes will be helpful to peer reviewers.

Performance Measures for (B)(4)(c):

General goals to be provided at time of application, including baseline data and annual targets:

- Number of Early Learning and Development Programs in the top tiers of the Tiered Quality Rating and Improvement System, by type of Early Learning and Development Program.
- Number and Percentage of Children with High Needs who are enrolled in Early Learning and Development Programs that that are in the top tiers of the Tiered Quality Rating and Improvement System, by type of Early Learning and Development Program.

(B)(5) Validating the effectiveness of State Tiered Quality Rating and Improvement Systems.

The extent to which the State has a High-Quality Plan to design and implement evaluations—working with an independent evaluator and, when

warranted, as part of a cross-State evaluation consortium—of the relationship between the ratings generated by the State's Tiered Quality Rating and Improvement System and the learning outcomes of children served by the State's Early Learning and Development Programs by—

(a) Validating, using research-based measures, as described in the State Plan (which also describes the criteria that the State used or will use to determine those measures), whether the tiers in the State's Tiered Quality Rating and Improvement System accurately reflect differential levels of program quality; and

(b) Assessing, using appropriate research designs and measures of progress (as identified in the State Plan), the extent to which changes in quality ratings are related to progress in children's learning, development, and school readiness.

Focused Investment Areas—Sections (C), (D), and (E)

Each State must address in its application—

(1) Two or more of the selection criteria in Focused Investment Area (C);

(2) One or more of the selection criteria in Focused Investment Area (D); and

(3) One or more of the selection criteria in Focused Investment Area (E).

Evidence for (B)(5):

- Any supporting evidence the State believes will be helpful to peer reviewers.

Performance Measures for (B)(5):

- None required.

C. Promoting Early Learning and Development Outcomes for Children.

The applicant must address at least two of the selection criteria within Focused Investment Area (C), which are as follows:

(C)(1) Developing and using statewide, high-quality Early Learning and Development Standards.

The extent to which the State has a High-Quality Plan to put in place high-quality Early Learning and Development Standards that are used statewide by Early Learning and Development Programs and that—

(a) Includes evidence that the Early Learning and Development Standards are developmentally, culturally, and linguistically appropriate across each age group of infants, toddlers, and preschoolers, and that they cover all Essential Domains of School Readiness;

(b) Includes evidence that the Early Learning and Development Standards are aligned with the State's K–3 academic standards in, at a minimum, early literacy and mathematics;

(c) Includes evidence that the Early Learning and Development Standards are incorporated in Program Standards, curricula and activities, Comprehensive Assessment Systems, the State's Workforce Knowledge and Competency Framework, and professional development activities; and

(d) The State has supports in place to promote understanding of and commitment to the Early Learning and Development Standards across Early Learning and Development Programs.

Evidence for (C)(1)(a) and (b):

- To the extent the State has implemented Early Learning and Development Standards that meet the elements in criteria (C)(1)(a) and (b), submit—
  - Proof of use by all types of Early Learning and Development Programs in the State;
  - The State's Early Learning and Development Standards for:
—Infants and toddlers
—Preschoolers
  - Documentation that the standards are developmentally, linguistically and culturally appropriate for all children, including children with disabilities and developmental delays and English Learners;
  - Documentation that the standards address all Essential Domains of School Readiness and that they are of high-quality; and
  - Documentation of the alignment between the State's Early Learning and Development Standards and the State's K–3 standards.

Performance Measures for (C)(1):

- None required.

(C)(2) Supporting effective uses of Comprehensive Assessment Systems.

The extent to which the State has a High-Quality Plan to support the effective implementation of developmentally appropriate Comprehensive Assessment Systems by—

(a) Working with Early Learning and Development Programs to select assessment instruments and approaches that are appropriate for the target populations and purposes;

(b) Working with Early Learning and Development Programs to strengthen Early Childhood Educators' understanding of the purposes and uses of each type of assessment included in the Comprehensive Assessment Systems;

(c) Articulating an approach for aligning and integrating assessments and sharing assessment results, as appropriate, in order to avoid duplication of assessments and to coordinate services for Children with High Needs who are served by multiple Early Learning and Development Programs; and

(d) Training Early Childhood Educators to appropriately administer assessments and interpret and use assessment data in order to inform and improve instruction, programs, and services.

Evidence for (C)(2):

- Any supporting evidence the State believes will be helpful to peer reviewers.

Performance Measures for (C)(2):

- None required.

(C)(3) Identifying and addressing the health, behavioral, and developmental needs of Children with High Needs to improve school readiness.

The extent to which the State has a High-Quality Plan to identify and address the health, behavioral, and developmental needs of Children with High Needs by—

(a) Establishing a progression of standards for ensuring children's health and safety; ensuring that health and behavioral screening and follow-up occur; and promoting children's physical, social, and emotional development across the levels of its Program Standards;

(b) Increasing the number of Early Childhood Educators who are trained and supported on an on-going basis in meeting the health standards;

(c) Promoting healthy eating habits, improving nutrition, expanding physical activity; and

(d) Leveraging existing resources to meet ambitious yet achievable annual targets to increase the number of Children with High Needs who—

(1) Are screened using Screening Measures that align with the Medicaid Early Periodic Screening, Diagnostic and Treatment benefit (see section 1905(r)(5) of the Social Security Act) or the well-baby and well-child services available through the Children's Health Insurance Program (42 CFR 457.520), and that, as appropriate, are consistent with the Child Find provisions in IDEA (see sections 612(a)(3) and 635(a)(5) of IDEA);

(2) Are referred for services based on the results of those screenings, and, where appropriate, received follow-up; and

(3) Participate in ongoing health care as part of a schedule of well-child care, including the number of children who are up to date in a schedule of well-child care.

Evidence for (C)(3)(a):

- To the extent the State has established a progression of health standards across the levels of Program Standards that meet the elements in criterion (C)(3)(a), submit—

○ The progression of health standards used in the Program Standards and the State's plans for improvement over time, including documentation demonstrating that this progression of standards appropriately addresses health and safety standards; developmental, behavioral, and sensory screening, referral, and follow-up; health promotion including healthy eating habits, improved nutrition, and increased physical activity; oral health; and social and emotional development; and health literacy among parents and children.

Evidence for (C)(3)(b):

• To the extent the State has existing and projected numbers and percentages of Early Childhood Educators who receive training and support in meeting the health standards, the State must submit documentation of these data. If the State does not have these data, the State must outline its plan for deriving them.

Evidence for (C)(3)(c):

Any supporting evidence the State believes will be helpful to peer reviewers.

Evidence for (C)(3)(d):

• Documentation of the State's existing and future resources that are or will be used to address the health, behavioral, and developmental needs of Children with High Needs. At a minimum, documentation must address the screening, referral, and follow-up of all Children with High Needs; how the State will promote the participation of Children with High Needs in ongoing health care as part of a schedule of well-child care; how the State will promote healthy eating habits and improved nutrition as well as increased physical activity for Children with High Needs; and how the State will promote health literacy for children and parents.

Performance Measures for (C)(3)(d):

General goals to be provided at time of application, including baseline data and annual targets:

• Number of Children with High Needs Screened.

• Number of Children with High Needs referred for services and received follow-up/treatment.

• Number of Children with High Needs that participate in ongoing health care as part of a schedule of well-child care.

• Of these participating Children with High Needs, the number or percentage of children who are up-to-date in receiving services as part of a schedule of well-child care.

(C)(4) Engaging and supporting families.

The extent to which the State has a High-Quality Plan to provide culturally and linguistically appropriate information and support to families of Children with High Needs in order to promote school readiness for their children by—

(a) Establishing a progression of culturally and linguistically appropriate standards for family engagement across the levels of its Program Standards, including activities that enhance the capacity of families to support their children's education and development;

(b) Increasing the number and percentage of Early Childhood Educators trained and supported on an on-going basis to implement the family engagement strategies included in the Program Standards; and

(c) Promoting family support and engagement statewide, including by leveraging other existing resources such as through home visiting programs, other family-serving agencies, and through outreach to family, friend, and neighbor caregivers.

Evidence for (C)(4)(a):

• To the extent the State has established a progression of family engagement standards across the levels of Program Standards that meet the elements in criterion (C)(4)(a), submit—

○ The progression of culturally and linguistically appropriate family engagement standards used in the Program Standards that includes strategies successfully used to engage families in supporting their children's development and learning. A State's family engagement standards must address, but need not be limited to: parent access to the program, ongoing two-way communication with families, parent education in child development, outreach to fathers and other family members, training and support for families as children move to preschool and kindergarten, social networks of support, intergenerational activities, linkages with community supports and adult and family literacy programs, parent involvement in decision making, and parent leadership development; and

○ Documentation that this progression of standards includes activities that enhance the capacity of families to support their children's education and development.

Evidence for (C)(4)(b):

• To the extent the State has existing and projected numbers and percentages of Early Childhood Educators who receive training and support on the family engagement strategies included in the Program Standards, the State must submit documentation of these data. If the State does not have these data, the State must outline its plan for deriving them.

Evidence for (C)(4)(c):

• Documentation of the State's existing resources that are or will be used to promote family support and engagement statewide, including through home visiting programs and other family-serving agencies and the identification of new resources that will be used to promote family support and engagement statewide.

Performance Measures for (C)(4)

• None required.

D. A Great Early Childhood Education Workforce

The applicant must address at least one of the selection criteria within Focused Investment Area (D), which are as follows:

(D)(1) Developing a Workforce Knowledge and Competency Framework and a progression of credentials.

The extent to which the State has a High-Quality Plan to—

(a) Develop a common, statewide Workforce Knowledge and Competency Framework designed to promote children's learning and development and improve child outcomes;

(b) Develop a common, statewide progression of credentials and degrees aligned with the Workforce Knowledge and Competency Framework; and

(c) Engage postsecondary institutions and other professional development providers in aligning professional development opportunities with the State's Workforce Knowledge and Competency Framework.

Evidence for (D)(1):

• To the extent the State has developed a common, statewide Workforce Knowledge and Competency Framework that meets the elements in criterion (D)(1), submit:

○ The Workforce Knowledge and Competencies;

○ Documentation that the State's Workforce Knowledge and Competency Framework addresses the elements outlined in the definition of Workforce Knowledge and Competency Framework in the *Program Definitions* section of this notice and is designed to promote children's learning and development and improve outcomes.

Performance Measures for (D)(1)

• None required.

(D)(2) Supporting Early Childhood Educators in improving their knowledge, skills, and abilities.

The extent to which the State has a High-Quality Plan to improve the effectiveness and retention of Early Childhood Educators who work with Children with High Needs, with the goal of improving child outcomes by—

(a) Providing and expanding access to effective professional development opportunities that—

(1) Are aligned with the State's Workforce Knowledge and Competency Framework;

(2) Tightly link training with professional development approaches, such as coaching and mentoring; and

(3) Are supported by strong evidence (e.g. available evaluations, developmental theory, and/or data or information) as to why these policies and incentives will be effective in improving outcomes for Children with High Needs;

(b) Implementing effective policies and incentives (e.g., scholarships, compensation and wage supplements, tiered reimbursement rates, other financial incentives, management opportunities) to promote professional improvement and career advancement along an articulated career pathway that—

(1) Are aligned with the State's Workforce Knowledge and Competency Framework;

(2) Tightly link training with professional development approaches, such as coaching and mentoring; and

(3) Are supported by strong evidence provided (e.g. available evaluations, developmental theory, or data or information) as to why these policies and incentives will be effective in improving outcomes for Children with High Needs;

(c) Publicly reporting aggregated data on Early Childhood Educator development, advancement, and retention; and

(d) Setting ambitious yet achievable targets for—

(1) Increasing the number of postsecondary institutions and professional development providers with programs that are aligned to the Workforce Knowledge and Competency Framework and the number of Early Childhood Educators who receive credentials from postsecondary institutions and professional development providers that are aligned to the Workforce Knowledge and Competency Framework; and

(2) Increasing the number and percentage of Early Childhood Educators who are progressing to higher levels of credentials that align with the Workforce Knowledge and Competency Framework.

Evidence for (D)(2):

• Evidence to support why the proposed professional development opportunities, policies, and incentives will be effective in improving outcomes for Children with High Needs (e.g. available evaluations, developmental theory, and/or data or information about the population of Children with High Needs in the State).

Performance Measures for (D)(2)(d):

General goals to be provided at time of application, including baseline data and annual targets:

• (D)(2)(d)(1): Number of postsecondary institutions and professional development providers that are aligned to the State's Workforce Knowledge and Competency Framework, and the number of Early Childhood Educators receiving credentials from those aligned postsecondary institutions or professional development providers.

• (D)(2)(d)(2): Number and percentage of Early Childhood Educators who are progressing to higher levels of credentials that align with the State's Workforce Knowledge and Competency Framework.

E. Measuring Outcomes and Progress

The applicant must address at least one of the selection criteria within Focused Investment Area (E), which are as follows:

(E)(1) Understanding the status of children's learning and development at kindergarten entry.

The extent to which the State has a High-Quality Plan to implement, independently or as part of a cross-State consortium, a common, statewide Kindergarten Entry Assessment that informs instruction and services in the early elementary grades and that—

(a) Is aligned with the State's Early Learning and Development Standards and covers all Essential Domains of School Readiness;

(b) Is valid, reliable, and appropriate for the target population and for the purpose for which it will be used, including for English learners and children with disabilities;

(c) Is administered beginning no later than the start of school year ending during the fourth year of the grant to children entering a public school kindergarten; States may propose a phased implementation plan that forms the basis for broader statewide implementation;

(d) Is reported to the Statewide Longitudinal Data System, and to the early learning data system, if it is separate from the Statewide Longitudinal Data System, as permitted under and consistent with the requirements of Federal, State, and local privacy laws; and

(e) Is funded, in significant part, with Federal or State resources other than those available under this grant, (e.g., with funds available under section 6111 or 6112 of the ESEA).

Evidence for (E)(1):

• Any supporting evidence the State believes will be helpful to peer reviewers.

Performance Measures for (E)(1):

• None required.

(E)(2) Building or enhancing an early learning data system to improve instruction, practices, services, and policies.

The extent to which the State has a High-Quality Plan to enhance the State's existing Statewide Longitudinal Data System or to build or enhance a separate, coordinated, early learning data system that aligns and is interoperable with the Statewide Longitudinal Data System, and that either data system—

(a) Has all of the Essential Data Elements;

(b) Enables uniform data collection and easy entry of the Essential Data Elements by Participating State Agencies and Participating Programs;

(c) Facilitates the exchange of data among Participating State Agencies by using standard data structures, data formats, and data definitions such as Common Education Data Standards to ensure interoperability among the various levels and types of data;

(d) Generates information that is timely, relevant, accessible, and easy for Early Learning and Development Programs and Early Childhood Educators to use for continuous improvement and decision making; and

(e) Meets the Data System Oversight Requirements and complies with the requirements of Federal, State, and local privacy laws.

Evidence for (E)(2):

• Any supporting evidence the State believes will be helpful to peer reviewers.

Performance Measures for (E)(2):

• None required.

Final Priorities, Requirements, Definitions, and Selection Criteria:

We will announce the final priorities, requirements, definitions, and selection criteria in the **Federal Register**. We will determine the final priorities, requirements, definitions, and selection criteria, after considering responses to this notice and other information available to the Departments. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to these priorities, requirements, definitions, and selection criteria, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretaries must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action would have an annual effect on the economy of more than $100 million because the Departments anticipate more than that amount will be appropriated for RTT–ELC and awarded as grants. Therefore, this proposed action is ''economically significant'' and subject to review by OMB under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, we have assessed the potential costs and benefits, both quantitative and qualitative, of this proposed regulatory action and have determined that the benefits would justify the costs.

The Departments also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are proposing these priorities, requirements, definitions, and selection criteria only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits.

Based on the analysis that follows, the Departments believe that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this proposed regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In this regulatory impact analysis we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered.

Discussion of Costs and Benefits

The Secretaries believe that the proposed priorities, requirements, definitions, and selection criteria would not impose significant costs on eligible States. States that applied for a grant under the FY 2011 RTT–ELC competition reported that they found the application process to be useful in organizing their early childhood planning efforts because the priorities, requirements, definitions, and selection criteria provided them with direction and structure for developing a State High-Quality Early Learning plan. Several unfunded States then used their prepared application as their State's strategic early learning plan. In addition, the proposed priorities, requirements, definitions, and selection criteria, in particular those related to maintaining conditions of reform required under the FY 2011 RTT–ELC competition, would require continuation of existing commitments and investments rather than the imposition of additional burdens and costs for applicant States. The Departments believe, therefore, that those States that previously applied but did not receive funding would incur minimal costs in developing an application.

In addition, because the Departments are maintaining the criteria and priorities of the FY 2011 competition, States that did not previously apply can draw upon the posted applications and reviewer comments from the FY 2011 competition. These resources will minimize burden for all applicants. The Departments believe therefore that the benefits of developing an application for this competition outweigh the costs.

We believe that States will significantly benefit from the application process because it will require them to build strong relationships between State agencies and early learning non-profit organizations and consider how to use Federal, State, and local funding streams to best support early learning. A further benefit is that the proposed priorities, requirements, definitions, and selection criteria would result in the selection of high-quality grantees that are most likely to successfully implement RTT–ELC grants in the manner that the Departments believe will best enable the program to achieve its objective of creating the conditions for effective reform in State early learning systems.

The proposed priorities, requirements, definitions, and selection criteria clarify the scope of activities the Secretaries expect to support with program funds. The pool of possible interested applicants is limited to State applicants that have not previously received an RTT–ELC grant. Potential applicants need to consider carefully the effort that will be required to prepare a strong application, their capacity to implement projects successfully, and their chances of submitting a successful application.

Program participation is voluntary. The Secretaries believe that the costs imposed on applicants by the proposed priorities, requirements, definitions, and selection criteria would be limited to paperwork burden related to preparing

an application and that the benefits of implementing these proposals would outweigh any costs incurred by applicants. The costs of carrying out activities associated with the application would be paid for with program funds. Thus, the costs of implementation would not be a burden for eligible applicants, including small entities.

Elsewhere in this document, under Paperwork Reduction Act of 1995, we identify and explain burdens specifically associated with information collection requirements.

Regulatory Alternatives Considered

An alternative to promulgating these priorities, requirements, definitions, and selection criteria would be to use FY 2013 Race to the Top funds to make awards to the remaining highest-scoring unfunded applications from the FY 2011 RTT–ELC competition. However, the Departments have determined that funding applications from the FY 2011 competition would result in funding applications that are likely outdated and of only moderate quality, having received fewer than 75 percent of the total points available in the FY 2011 competition. The Departments have determined that $300 million is a sufficient amount to hold a high-quality competition and that holding a new competition will result in higher quality applications than those submitted in FY 2011, due to progress made in early learning systems during the last two years.

The Departments also could have decided to make significant changes to the priorities, requirements, definitions, and selection criteria rather than making only the few changes proposed here. However, we have determined that making significant changes would be unduly burdensome on applicants who will rely on their FY 2011 efforts to prepare an updated application and that maintaining substantially the same priorities, requirements, definitions, and selection criteria will better enable the Departments to conduct an evaluation of the performance of grantees under the RTT–ELC program overall.

To assist the Departments in complying with the requirements of Executive Order 12866, the Secretaries invite comments on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed priorities, requirements, definitions, and selection criteria without impeding the effective and efficient administration of the RTT–ELC program.

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this regulatory action. This table provides our best estimate of the Federal payments to be made to States under this program as a result of this regulatory action. Expenditures are classified as transfers to States.

ACCOUNTING STATEMENT CLASSIFICATION OF ESTIMATED EXPENDITURES

[in millions]

Category	Transfers
Annualized Monetized Transfers.	$300,000,000.
From Whom To Whom?	From the Federal Government to States.

The FY 2013 RTT–ELC competition process would provide approximately $300 million in competitive grants to eligible applicants.

Regulatory Flexibility Act Certification

The Secretaries certify that this proposed regulatory action will not have a significant economic impact on a substantial number of small entities. This proposed regulatory action will not have a significant economic impact on small entities (such as subaward recipients) as States are not small entities within the meaning of the Regulatory Flexibility Act.

The Secretaries invite comments from small entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Departments will conduct a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Departments' collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Departments can properly assess the impact of collection requirements on respondents.

We estimate that each applicant would spend approximately 225 hours of staff time to address the proposed priorities, requirements, definitions, and selection criteria, prepare the application, and obtain necessary clearances. The total number of hours for all applicants will vary based on the number of applications. Based on the number of applications received in the FY 2011 competition, we expect to receive approximately 38 applications for these funds. The total number of hours for all expected applicants is an estimated 8,550 hours. We estimate the total cost per hour of the applicant-level staff who carry out this work to be $30 per hour. The total estimated cost for all applicants would be $256,500. We have submitted a new Information Collection Request (ICR) for the information collection requirements, under OMB control number 1810—New, to OMB.

If you want to comment on the proposed information collection requirements, please submit your comments through the Federal eRulemaking Portal at by selecting Docket ID number [insert FDMS Docket number] or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E117, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Departments, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Departments assess the impact of the information collection requirements and minimize the public's reporting burden. It also helps the public understand the Departments' information collection requirements and provide the requested data in the desired format. The Departments are soliciting comments on the proposed information collection request (ICR) that is described below. The Departments are especially interested in public comment

addressing the following issues: (1) Is this collection necessary to the proper functions of the Departments; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Departments enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Departments minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of the Departments' specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents from both Departments 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 Departments 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 either Department.

Dated: May 14, 2013.

Deborah S. Delisle,

Assistant Secretary for Elementary and Secondary Education, U.S. Department of Education.

George Sheldon,

Acting Assistant Secretary for Children and Families, U.S. Department of Health and Human Services.

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Part IV

Nuclear Regulatory Commission

10 CFR Part 73
Physical Protection of Irradiated Reactor Fuel in Transit; Final Rule

Nuclear Regulatory Commission

10 CFR Part 73

RIN 3150–AI64

[NRC–2009–0163]

Physical Protection of Irradiated Reactor Fuel in Transit

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its security regulations for the transport of irradiated reactor fuel (the terms ''irradiated reactor fuel'' and ''spent nuclear fuel'' are used interchangeably in this rule). This rulemaking establishes generically applicable security requirements similar to the requirements currently imposed by NRC Order EA–02–109, ''Issuance of Order for Interim Safeguards and Security Compensatory Measures for the Transportation of Spent Nuclear Fuel Greater than 100 Grams.'' This rulemaking also establishes performance standards and objectives for the protection of spent nuclear fuel (SNF) shipments from theft, diversion, or radiological sabotage. Additionally, this rulemaking addresses, in part, a 1999 petition for rulemaking from the State of Nevada (PRM–73–10) that requests the NRC to strengthen the regulations governing the security of SNF shipments against malevolent acts. This rule will apply to each NRC licensee who transports, or delivers to a carrier for transport SNF.

DATES: The rule is effective on August 19, 2013.

ADDRESSES: Please refer to Docket ID NRC 2009–0163 when contacting the NRC about the availability of information for this final rule. You can access information and comment submittals to this final rule, which the NRC possesses and is publicly available, by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID: NRC–2009–0163.
- 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 document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Cardelia Maupin, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2312, email: *Cardelia.Maupin@nrc.gov.*

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I. Background

A. Pre-September 11, 2001

The NRC has long participated in efforts to address radioactive source protection and security. On June 15, 1979, the NRC published in the **Federal Register** (44 FR 34466) an interim final rule that established requirements for the physical protection of irradiated reactor fuel in transit. The interim final rule added a new § 73.37 to Title 10 of the *Code of Federal Regulations* (10 CFR), ''Requirements for physical protection of irradiated reactor fuel in transit.'' The interim rule and related guidance, NUREG–0561, ''Physical Protection of Shipments of Irradiated Reactor Fuel,'' were issued in effective form without the benefit of public comment. At the time of publication, public comments were solicited on the interim regulation and the guidance document. After considering public comments, amendments to the interim final rule and the guidance document were issued on June 3, 1980 (45 FR 37399).

Section 73.37 has changed little since its promulgation in 1980. The current regulation requires that licensees establish a physical protection system for SNF shipments that meets the following objectives: (1) Minimize the possibilities for radiological sabotage of SNF shipments, especially within heavily populated areas; and (2) facilitate the location and recovery of SNF shipments that may have come under the control of unauthorized persons. The regulation also requires that the physical protection system: (1) Provide for the early detection and assessment of attempts to gain unauthorized access to or control over SNF shipments, (2) provide notification to the appropriate response forces of any sabotage events, and (3) impede attempts at radiological sabotage of SNF shipments in heavily populated areas or attempts to illicitly move such shipments into heavily populated areas.

Other NRC regulations also support the protection of SNF in transit. For example, the regulations in § 73.72, ''Requirement for Advance Notice of Shipment of Formula Quantities of Strategic Special Nuclear Material, Special Nuclear Material of Moderate Strategic Significance, or Irradiated Reactor Fuel,'' require licensees to notify the NRC in advance about shipments of SNF. The regulations in 10 CFR Part 71, ''Packaging and Transportation of Radioactive Material,'' establish requirements for packages used to transport SNF.

In addition, by a letter dated June 22, 1999, the State of Nevada submitted a petition for rulemaking requesting that NRC strengthen its regulations governing the security of SNF shipments against malevolent acts. The NRC docketed the petition on July 13, 1999, as Docket No. PRM–73–10. The NRC published for public comment a notice of receipt of PRM–73–10 on September 13, 1999 (64 FR 49410). The NRC discontinued its review of this

petition following the terrorist attacks of September 11, 2001. The petition review was resumed in 2008. The NRC addressed the petition, in part, in the ''State of Nevada: Denial of Portions of Petition for Rulemaking, Consideration of the Remaining Portions in the Rulemaking Process,'' December 7, 2009 (74 FR 64012). The aspects of PRM–73–10 not addressed as a part of the December 2009 decision are considered as a part of this rulemaking.

B. Post-September 11, 2001

The terrorist attacks of September 11, 2001, heightened concerns about the use of risk-significant radioactive materials in a malevolent act. In response to the attacks, the NRC determined that additional security measures were needed to enhance the protection of SNF shipments from theft, diversion, or radiological sabotage. Accordingly, the NRC issued EA–02–109, ''Issuance of Order for Interim Safeguards and Security Compensatory Measures for the Transportation of Spent Nuclear Fuel Greater than 100 Grams,'' (67 FR 63167; October 10, 2002), to ensure that SNF is shipped in a manner that protects the common defense and security and the public health and safety. This order was issued to NRC power reactor licensees; non-power reactor licensees; independent spent fuel storage installation (ISFSI) licensees; and special nuclear material licensees, who shipped, received, or planned to ship or receive SNF under the provisions of 10 CFR Part 71. Subsequently, the Commission issued similar security orders during the period October 2003 through December 8, 2010. These orders are collectively referred to as the ''Orders for SNF in Transit'' or ''the Orders.'' All of the Orders were issued as immediately effective under the NRC's authority to protect the common defense and security pursuant to Sections 53, 103, 104, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended (AEA), and the Commission's regulations in § 2.202 and 10 CFR parts 50, 70, 71, and 72.

On July 21, 2010, the Commission authorized the NRC staff to publish a proposed rule to establish security requirements for SNF in transit. The proposed rule, 10 CFR 73.37, ''Physical Protection of Irradiated Fuel in Transit,'' (RIN 3150–AI64, Docket ID: NRC–2009–0163), was published in the **Federal Register** on October 13, 2010 (75 FR 62695). The proposed rule incorporated the security requirements in the Orders as well as lessons learned from implementation of the Orders. The proposed rule provided a 90-day public comment period that was to end on January 11, 2011. After receiving several requests to extend the comment period, the NRC published on January 10, 2011 (76 FR 1376), a notice extending the public comment period until April 11, 2011.

C. Regulatory Framework

For several decades, SNF has been shipped by the Federal government and by the private sector (commercial). The primary objective of these shipments has been to move SNF to interim storage facilities. The Federal agency responsible for government transport of SNF is the U.S. Department of Energy (DOE). The SNF shipments are generally divided into two categories, commercial shipments and DOE-managed shipments. Commercial SNF shipments are from NRC-licensed nuclear power reactors and non-power reactors to another reactor site, which is usually done to consolidate storage. The DOE-managed shipments are from foreign research reactors, DOE-owned research and defense reactors, and nuclear powered U.S. Navy ships, and from NRC-licensed non-power reactors. In addition, on a few rare occasions, DOE has accepted SNF from commercial nuclear power plants; e.g., Three Mile Island Unit 2, for storage at its facilities.

The safe and secure shipment of SNF requires coordination and collaboration between various Federal, State, and local government agencies. These agencies work together to ensure an orderly regulatory pattern for SNF shipments. The following questions and answers provide additional information regarding the roles and responsibilities for SNF shipments.

1. What is the role of the NRC in SNF shipments?

The NRC regulates commercial SNF shipments in terms of both safety and security. Safety involves the protection of public health and safety during transport, while security relates to the protection of shipments against deliberate, malevolent acts. The NRC and the U.S. Department of Transportation (DOT) share Federal regulatory responsibility for SNF transportation safety. The NRC and DOT have signed a memorandum of understanding (MOU) (44 FR 38690; July 2, 1979) that delineates their respective responsibilities for regulating the transport of radioactive materials, which includes SNF shipments. Generally, the NRC regulates the design and construction of SNF shipping containers for domestic and foreign packages used to transport SNF solely within the U.S. Although DOT is the lead government agency responsible for the approval of export and import packages, it relies on the NRC's evaluation as the basis for approval of these packages. In addition, the NRC regulates the physical protection of commercial SNF in transit against sabotage or other malicious acts, which are recognized in the MOU and DOT routing regulations in Title 49 of the CFR (49 CFR) 397.101. The NRC requirements in 10 CFR Part 73 are applied to these shipments of SNF. The NRC fact sheet on transportation of radioactive materials can be found at: *http://www.nrc.gov/reading-rm/doc-collections/fact-sheets/transport-spenfuel-radiomats-bg.html.*

2. What is the role of DOT in commercial SNF shipments?

The DOT has the primary responsibilities, in consultation with the NRC, for issuing the safety requirements for the carriers of SNF and for establishing the conditions of transport, such as routing, handling and storage incidental to transport, and vehicle and driver requirements, which are reflected in the MOU. The DOT also regulates the labeling, classification, and marking of all SNF packages and transport vehicles, and carrier-generated transport security plans. A link to the DOT's Web site is provided on the NRC's public Web site at *http://www.nrc.gov/materials/transportation.html.*

3. What are the roles of DOT and NRC in the route selection and approval process for commercial SNF shipments?

The route selection and approval process is also a reflection of a coordinated and orderly regulatory pattern between DOT and NRC requirements. The route for a commercial SNF shipment by highway is selected by the shipper or carrier using the routing criteria specified in the DOT regulations found in 49 CFR Parts 172 (Subpart I, Safety and Security Plans) and 397 (Subpart D, Routing of Class 7 (Radioactive) Materials). The DOT highway routing criteria requires carriers to (1) ensure routes are chosen based on minimizing radiological risk; (2) consider available information on accident rates, transit time, population density and activities, and the times of day and the day of the week during which transportation will occur to determine the level of radiological risk; and (3) instruct the driver about the route and the hazards of the shipment. No written approval is required by DOT. However, a written route plan must be prepared by the carrier and provided to drivers and shippers.

After the route has been selected by a carrier, the shipper (NRC licensee)

submits the proposed written route plan to the NRC for a security review or vulnerability assessment. The NRC review takes into consideration mileage, transit time, and local law enforcement agency (LLEA) and emergency response contact information, adequacy of safe haven locations, and communications capability along the route. If the proposed route meets NRC security criteria, the route is issued a written route approval. If the NRC requires that the proposed route be changed to comply with its security regulations in 10 CFR part 73, a carrier must modify the proposed route in accordance with specific provisions in the DOT routing criteria (49 CFR 397.101).

For shipments by rail, the DOT requirements for routing radioactive material are found within 49 CFR Parts 172, 174, and 209. The DOT requires rail carriers to compile annual data on certain shipments of hazardous materials, including Highway Route Controlled Quantities (HRCQ). The data is used to analyze safety and security risks along rail routes where those materials are transported, to assess alternative routing options, and to make routing decisions based on those assessments. Rail carriers must assess the available routes ensuring, at a minimum, that 27 factors are considered. These 27 factors include, but are not limited to, consideration of rail traffic density, transit times, number and types of grade crossings, proximity to iconic targets, population densities, and venues along the route.

Rail carriers must also seek relevant information from State and local officials, as appropriate, regarding security risks to high-consequence targets along or in proximity to a route used by a rail carrier to transport security-sensitive materials. Oversight is provided by DOT's Federal Railroad Administration (FRA), including the review and inspection of rail carriers' risk analyses and route selections. The FRA does not pre-approve rail routes. If the FRA determines that a carrier's route selection documentation and underlying analyses are deficient, the carrier may be required to revise the analyses or make changes in the route selection. In addition, if it is determined by DOT that a particular route chosen by the railroad is not the safest and most secure practicable route available, the FRA can require the use of an alternative route until such time as the identified deficiencies for the originally chosen route are corrected by the railroad.

4. What is the role of DOE?

The DOE has broad authority under the AEA to regulate all aspects of activities involving radioactive materials that are undertaken by DOE or on its behalf, including the transportation of SNF. The DOE uses this authority to manage certain SNF shipments which usually involve special circumstances, such as SNF from foreign research reactors, DOE-owned research and defense reactors, nuclear powered U.S. Navy ships, and Three Mile Island Unit 2 to DOE storage facilities. In addition, DOE-manages the shipment of SNF from NRC-licensed non-power reactors to DOE facilities for interim storage because of the lack of a permanent disposal facility for SNF.

The DOE-managed SNF shipments generally fall into two categories: classified and non-classified shipments. The classified national security shipments include rail shipments of naval SNF under the Naval Nuclear Propulsion Program and highway shipment of classified materials. The DOE requirements for classified national security shipments are different from those of the NRC. The DOE conducts classified shipments of SNF using their Office of Secure Transportation (OST). The OST shipments are escorted by armed, specially trained (trained in communications, firearms, tactics, observation, and use of deadly force) active duty U.S. Navy personnel who maintain 24-hour surveillance of the SNF shipment. The OST Transportation Emergency Communications Center monitors, tracks, and provides communication with every shipment.

The majority of the DOE-managed SNF shipments are non-classified. These shipments are subject to regulation by DOT, NRC, and State and local governments, as appropriate. The DOE utilizes commercial carriers that undertake the DOE-managed shipments under the same terms and conditions as shipments between commercial nuclear power plants. These DOE contracted commercial carriers are subject to the same DOT and NRC requirements that are applied to any comparable commercial shipment of SNF. The DOE policy for non-classified SNF shipments is found under the DOE Orders 460.1C, ''Packaging and Transportation Safety,'' and 460.2A, ''Departmental Materials Transportation and Packaging Management.'' The DOE Manual 460.2–1A (DOE Manual), ''Radioactive Material Transportation Practices Manual,'' dated June 4, 2008, provides that SNF shipments from NRC-licensed non-power reactors must comply with the NRC physical protection requirements in 10 CFR part 73. In addition, it is DOE's policy to seek NRC approval of the physical protection measures used for its foreign research reactor SNF shipments.

For shipments from foreign research reactors, and DOE-owned research and defense reactors, DOE is responsible for stakeholder interactions, final route approval, and other applicable safeguards and security requirements. The DOE Manual provides that these shipments will meet or exceed the requirements prescribed by DOT and NRC for comparable commercial transportation.

The DOE also has authority to certify packages for domestic transport of DOE-generated SNF under DOT regulations in 49 CFR 173.7(d). However, this regulation requires DOE-approved packages to meet the NRC's performance criteria in 10 CFR part 71. As a result, DOE established a cost-reimbursable agreement with the NRC for the review of transportation packages for foreign research reactor and naval SNF shipments.

5. How are the NRC and DOE requirements similar and how are they different?

As stated in the answer to question 4, given the DOE policy to ''meet or exceed'' the NRC security requirements, the NRC and DOE requirements are similar for non-classified shipments of DOE SNF. Similar to the NRC, the DOE organizations are expected to coordinate with Federal, State, and LLEA regarding SNF shipments, including the determination of whether these agencies are planning to provide escorts for shipments. The DOE also expects drivers and escorts to maintain constant surveillance of the shipment.

One difference between the NRC and DOE requirements deals with the tracking and monitoring of SNF shipments. The DOE requires the use of DOE's Transportation Tracking and Communications System (TRANSCOM). In the final rule, the NRC requires continuous and active monitoring of SNF shipments, but a particular tracking method is not specified.

Another difference between the NRC and DOE requirements is the protection of SNF shipment information. For the NRC, information associated with an SNF shipment (i.e., shipment schedules and security plans) is protected as Safeguards Information (SGI) as specified by the requirements of §§ 73.21 and 73.22. Although DOE does not have the designation SGI, the DOE Manual in Section 6.0, Security provides, ''This information may require protection as Safeguards Information under NRC regulations or as Unclassified Controlled Nuclear Information or Official Use Only under

DOE regulations. Unauthorized disclosure of any of the above levels of information is a violation of the AEA and other legal authorities.'' As such, DOE directs movement control personnel to use NRC's SGI protection or comparable DOE security measures for the protection of SNF shipment information.

6. What are the roles of State and local governments?

State and local officials play an important role in SNF transportation. States have an important responsibility for enforcing the DOT highway safety regulations concerning Federal motor carrier safety and hazardous materials transportation. Highway shipments of SNF are subject to State inspections. State enforcement officials can stop and inspect vehicles for compliance with Federal and State transportation requirements regarding equipment, documentation, and driver fitness. States can also require carriers to obtain special permits to operate these vehicles.[1] State and local governments assist in route planning and provide LLEA personnel as armed escorts. The State and local governments are also responsible for providing the first line of government response to accidents and incidents within their jurisdiction.

II. Discussion

A. What action is the NRC taking in this rule?

The NRC is amending its security regulations for the transport of irradiated reactor fuel. This rulemaking establishes generically applicable security requirements and performance standards and objectives for the protection of SNF shipments from theft, diversion, or radiological sabotage. These new security requirements are similar to those requirements currently imposed by NRC Order EA–02–109. Additionally, this rulemaking addresses, in part, a 1999 petition for rulemaking from the State of Nevada (PRM–73–10) that requests NRC to strengthen the regulations governing the security of SNF shipments against malevolent acts.

B. Who will this action affect?

This rule affects NRC licensees that are authorized to transport or deliver to a carrier to transport SNF. This includes, but is not limited to, nuclear power plant licensees, non-power reactor licensees, special nuclear material licensees and ISFSI licensees who transport, or deliver to a carrier for transport, in a single shipment, a quantity of irradiated reactor fuel in excess of 100 grams (0.22 lbs) in net weight of irradiated fuel, exclusive of cladding or other structural or packaging material, which has a total external radiation dose rate in excess of 1 Gray (100 rad) per hour at a distance of 1 meter (3.3 feet) from any accessible surface without intervening shielding.

C. Why revise the requirements?

After the attacks of September 11, 2001, the NRC reevaluated its security requirements for SNF in transit. From this effort, additional measures were identified that the NRC determined would enhance the security of SNF in transit. The NRC issued a series of security orders requiring affected licensees to implement the security enhancements. This rulemaking is revising the NRC's regulations in 10 CFR Part 73 to incorporate and make generically applicable to all licensees shipping SNF the security requirements in the NRC Orders for SNF in Transit. These revisions also incorporate additional security requirements developed as a result of lessons learned from implementing the Order. The NRC has determined that including these security requirements in the regulations will enhance regulatory efficiency and effectiveness. In addition, the rulemaking process provided an opportunity for all stakeholders to participate in the development of the proposed security requirements.

D. When will the rule become effective?

The final rule will become effective 90 days after publication in the **Federal Register**. The 90 days will provide licensees time to develop programs and procedures, and conduct training on the new requirements. Most of the final rule provisions are similar to those contained in the Orders for SNF in Transit, and existing NRC security regulations; e.g,. provisions in §§ 73.21, 73.22, 73.56, 73.59, and 73.61. As such, most licensees affected by this rulemaking, (e.g., nuclear power plant licensees, non-power reactor licensees, special nuclear material licensees and ISFSI licensees) have already incorporated similar requirements into their security programs.

E. Why rescind the orders for SNF in transit?

Imposing long-term requirements through orders has not traditionally been the Commission's preferred method of regulation. Orders, unlike rules, do not apply prospectively to applicants for new licenses. The NRC would have to periodically issue new orders to cover new and amended licenses, and perhaps reissue orders periodically to existing licensees if requirements or administrative practices change. In order to make the requirements generically applicable to all present and future licensees, the NRC has determined that the security requirements should be incorporated in the regulations.

The security requirements in the Orders will remain in effect until licensees are notified in writing that the Orders are rescinded. The rule incorporates all the requirements which were contained in the Orders, as well as lessons learned from implementation of the Orders. Once the rule is effective, the NRC will take steps to rescind the Orders for SNF in Transit and will provide notice of the rescission to all NRC licensees subject to the Orders. In addition, the NRC will publish a notice in the **Federal Register**, informing the public of the effective date of the rescission of the Orders. The NRC will also issue letters to all affected categories of licensees, e.g., nuclear power plant licensees, non-power reactor licensees, special nuclear material licensees and ISFSI licensees. The **Federal Register** notice and licensee letters will be made publicly available via the NRC's public Web site and ADAMS.

F. When will the NRC issue guidance on these requirements?

In conjunction with this rulemaking, the NRC is revising NUREG–0561, which provides general guidance to licensees concerning the establishment of an acceptable security program for SNF shipments. On November 3, 2010 (75 FR 67636), the NRC published for public comment a revision to NUREG–0561. In order to allow the public sufficient time to review and comment on the draft revision, the NRC extended the comment period for the draft guidance document from February 11, 2011, until May 11, 2011. The NRC will publish in the **Federal Register** a notice of issuance of the revised NUREG–0561 shortly after the publication of the final rule.

G. What is requested by the State of Nevada in its petition for rulemaking (PRM–73–10)?

By a letter dated June 22, 1999, the State of Nevada (the petitioner) submitted a rulemaking petition (docketed as PRM–73–10) requesting that the NRC strengthen its regulations for the physical protection of SNF shipments against radiological sabotage

[1] National Research Council of the National Academies, Committee on Transportation of Radioactive Waste, *Going the Distance? The Safe Transport of Spent Nuclear Fuel and High-Level Radioactive Waste in the United States,* 2006, pp. 53–54.

and terrorist acts. The NRC published for public comment a notice of receipt of PRM–73–10 on September 13, 1999 (64 FR 49410). The Commission review of this petition was tabled following the terrorist attacks of September 11, 2001.

In PRM–73–10, the State of Nevada requested that the NRC: (1) Clarify the meaning of the term ''hand-carried equipment'' in § 73.1(a)(1)(i)(D); (2) clarify the definition of the term ''radiological sabotage'' in § 73.2 to include actions against SNF shipments that are intended to cause a loss of shielding, release of radioactive materials or cause economic damage or social disruption, regardless of the success or failure of the action; (3) amend the advance route approval requirements in § 73.37(b)(1)(vi) to require shippers and carriers of SNF to identify primary and alternative routes which avoid heavily populated areas; (4) require armed escorts along the entire road shipment route by eliminating the differential based on population in § 73.37(c); (5) require armed escorts along the entire rail shipment route by eliminating the differential based on population in § 73.37(d); (6) amend § 73.37(b) by adopting additional planning and scheduling requirements for SNF shipments that are similar to those in § 73.26(b); (7) amend § 73.37(d) to require SNF rail shipments in dedicated trains; and (8) conduct a comprehensive assessment of the consequences of terrorist attacks that have the capability of radiological sabotage.

The NRC addressed PRM–73–10, in part, in ''State of Nevada: Denial of Portions of Petition for Rulemaking, Consideration of the Remaining Portions in the Rulemaking Process,'' (74 FR 64012; December 7, 2009), which denied two requests, 1 and 8, namely, clarification of the meaning of the term ''hand-carried equipment'' and the conducting of a comprehensive assessment of the consequences of terrorist attacks that have the capability of radiological sabotage. The remaining aspects of the PRM–73–10 are considered and addressed as a part of this rulemaking. The NRC invited the public to comment on how the NRC addressed the remaining requests in PRM–73–10. The NRC's handling of the remaining petition requests, as a part of this rulemaking, and the public comments associated with these NRC actions are addressed in the following paragraphs.

General Comments on the NRC's Handling of PRM–73–10 in the Rule:

The comments received generally supported the NRC's handling of PRM–73–10. In particular, the State of Nevada endorsed how the NRC addressed its petition in the proposed rule. The State of Nevada indicated that the provisions of the proposed rule, coupled with other NRC regulatory changes since 2001, would incorporate all of the regulatory changes requested in PRM–73–10.

NRC's Response to the General Comments:

The comments expressed overall support of the NRC's handling of PRM–73–10. The NRC appreciates the general support for its handling of PRM–73–10. These comments did not require any change in the rule language.

Request 2 of PRM–73–10: Clarify the definition of the term ''radiological sabotage'' in § 73.2, ''Definitions,'' and amend it to expressly include ''deliberate actions which cause, or are intended to cause economic damage or social disruption regardless of the extent to which public health and safety are actually endangered by exposure to radiation.'' In the proposed rule, the NRC determined that the existing definition does not need to be revised. However, the NRC agrees that clarification may be useful. The NRC proposed addressing this petition request by clarifying the definition of radiological sabotage in NUREG–0561, which is the associated regulatory guidance.

Comments on the NRC's Handling of Request 2 of PRM–73–10 in the Rule:

Two comments were received relative to Request 2 of PRM–73–10. Nevada indicated that the NRC's clarification of the definition of radiological sabotage in NUREG/CR–0561 addressed its concerns. A commenter from the transportation industry (Radioactive Material Transportation and Storage Consulting (RAMTASC)) indicated that the State of Nevada's request to redefine radiological sabotage to include acts intended to cause economic or social disruption would be problematic. The RAMTASC indicated that the determination of economic or social disruption is very subjective. The commenter also indicated that the State of Nevada's ''subject matter experts'' placed extraordinarily high estimates on economic impacts that have not received peer review. The RAMTASC also indicated that the Nevada analysis was not supported by the analyses generated through Environmental Impact Statements prepared by DOE for the Yucca Mountain Program, or by studies performed by DOE's National Laboratories. The commenter concluded by indicating satisfaction with NRC's handling of Request 2 of PRM–73–10.

NRC's Response to the Request 2 Comments:

The comments expressed satisfaction with the NRC's handling of Request 2 of PRM–73–10. The comments do not require any change to the rule language, which is discussed further in Section III, Summary and Analysis of Public Comments on the Proposed Rule,'' Issue 2 of this document. However, after further review, the NRC has determined that the information that was provided in the draft guidance document relative to the definition needs further clarification for the following reasons: (1) To emphasize that the definition of ''radiological sabotage'' in 10 CFR 73.2 is not being changed relative to 10 CFR 73.37 or any other 10 CFR part 73 provisions; and (2) to ensure that the clarifying language is consistent with the intent of the rule, which is to establish performance standards and objectives for the protection of SNF shipments from theft, diversion, or radiological sabotage.

The previous amendments to 10 CFR 73.37 did not include requirements for armed escorts throughout the shipment route and did not specifically address protection of SNF shipments from acts of theft and diversion which were the deliberate acts that the petitioner indicated could cause economic or social disruption. The petitioner indicated that the definition of ''radiological sabotage'' should be clarified to address ''theft or diversion.'' The PRM–73–10 indicated that acts of ''theft or diversion'' could lead to economic or social disruption without the release of radiation if a SNF shipment is moved from a low populated area to an urban area since armed escorts were not required in low populated areas.

The deliberate actions which cause, or are intended to cause economic damage or social disruption'' that were described by the petitioner have been addressed in this rulemaking. These deliberate acts are addressed by the inclusion of requirements for the protection of SNF shipments against theft or diversion including the requirements for armed escorts throughout the shipment route. Therefore, the clarifying language in NUREG–0561 does not revise the level of security required for the protection of SNF in transit. Rather, it recognizes that, if the current definition of radiological sabotage and the requirements for the protection of SNF in transit are followed, economic consequences and social disruptions will likely be minimized.

Request 3 of PRM–73–10: Amend the advance route approval requirements in § 73.37(b)(7) to ''specifically require shippers and carriers to identify primary

and alternative routes which minimize highway and rail shipments through heavily populated areas.'' The State of Nevada also requested that the NRC should consider adopting the route selection criteria in NUREG–0561, as part of its regulations, and specifically require shippers and carriers to minimize use of routes which fail to comply with the route selection criteria.

The NRC is addressing the goal of minimizing SNF shipments through heavily populated areas in this rulemaking. The revisions to § 73.37 require licensees to preplan and coordinate their shipments with affected States, which is expected to minimize movement of SNF shipments through heavily populated areas. This issue is discussed in the following paragraph entitled, ''Why Preplan and Coordinate SNF Shipments?''

The PRM–73–10 request for the adoption of routing criteria into NUREG–0561 was considered by the NRC and determined to be not appropriate. The adoption of the routing criteria into the regulations could cause potential misunderstandings relative to the roles of the NRC and DOT. In addition, this action could potentially conflict with the MOU between DOT and NRC, which is discussed in Section I, ''Background,'' of this document.

Comments on the NRC's Handling of Request 3 of PRM–73–10 in the Rule:

The NRC received three comments on request 3 of PRM–73–10. The State of Nevada indicated that the NRC's proposed rule adopted an approach to routing different from their request. However, the State believes that the NRC's approach will achieve the primary objective, ''to minimize movement of SNF through heavily populated areas.'' In addition, the State of Nevada indicated that their concerns about the security of rail shipments through urban areas were addressed by regulations enacted in 2008 by the U.S. Department of Homeland Security's Transportation Security Administration (TSA) (49 CFR Parts 1520 and 1580; 73 FR 72130) and by DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) (49 CFR parts 172, 179, and 209; 73 FR 72182). The State of Nevada further elaborated that the new State preplanning involvement requirements in the NRC's proposed rule, combined with the requirements for State involvement under the new TSA and PHMSA rail security regulations, would allow affected States to address unique local conditions important for physical protection of shipments along rural routes.

A commenter from RAMTASC indicated that request 3 of PRM–73–10 would be problematic. The commenter indicated that the Nevada request could conflict with the railroad's responsibilities under the Rail Safety Improvement Act of 2008, which requires railroads to use objective data as the basis for selecting rail routes that provide for the best overall combination of safety and security. The RAMTASC indicated that specific routing requirements that minimize shipments through populated areas could lead to shipments being transported on lower quality rail tracks that would increase the accident risk. The commenter further elaborated that the trade-off between increasing security from speculative acts of terrorism by decreasing safety is not wise. The RAMTASC agreed with the NRC's decision to not incorporate specific routing requirements into the rule.

A commenter from a State organization (Western Interstate Energy Board (WIEB)) indicated, relative to Request 3 of PRM–73–10, that they agreed that the routing criteria in the proposed rule would generally reduce risk, including the risk of radiological sabotage. However, WIEB indicated that the criteria may cause conflicts in certain situations. For example, WIEB indicated, similar to the RAMTASC's comments, that it may be necessary for SNF rail shipments to go through heavily populated areas in order to reduce travel time and overall risk to the shipment because better quality rail track may go through urban areas.

NRC's Response to the Request 3 Comments:

The comments indicated support for the NRC's approach to request 3 of PRM–73–10, minimize movement of SNF through heavily populated areas. The comments do not require any change to the rule language, which is further discussed in Section III, ''Summary and Analysis of Public Comments on the Proposed Rule,'' Issues 17 and 40 of this document.

Requests 4 and 5 of PRM–73–10: The existing regulations in § 73.37(c) and (d) for road and rail shipments, respectively, require armed escorts in heavily populated areas, but not in other areas along the route. The PRM–73–10 requested that the NRC eliminate these differential armed escort requirements based upon population for both road and rail SNF shipments.

Sections 73.37(c) and (d) were revised to reflect these PRM–73–10 requests. The differentiation of security requirements based upon population causes potential areas of vulnerability along the shipment route for theft, diversion, or radiological sabotage. The rule ensures that the same security requirements apply along the entire route for road and rail shipments, and at any U.S. ports where vessels carrying SNF shipments are scheduled to stop.

Comments on the NRC's Handling of Requests 4 and 5 of PRM–73–10 in the Rule:

Three comments addressed requests 4 and 5 of PRM–73–10. The State of Nevada agreed that the proposed rule fully addressed their concerns. A commenter from the RAMTASC indicated that the armed escort requirement for SNF shipments is already part of most transportation security plans, and incorporating this change into the proposed rule ''makes sense.'' Another State organization, the Council of State Governments Midwestern Office (CSG Midwestern), indicated that the Midwestern States agreed with the decision to require the same security measures along the entire route rather than have different requirements for highly populated areas. The commenter further elaborated that the change will eliminate the likelihood of ''potential areas of vulnerability along the shipment route for theft, diversion, or radiological sabotage.''

NRC's Response to the Requests 4 and 5 Comments:

In general, there was overall support from the States and industry for requiring armed escorts for the entire road and rail route. The comments do not require any change to the rule language. Specific comments relative to the inclusion of these new requirements in the proposed rule are discussed further in Section III, Summary and Analysis of Public Comments on the Proposed Rule,'' Issue 40 of this document.

Request 6 of PRM–73–10: Amend § 73.37(b) by adopting additional planning and scheduling requirements for SNF shipments that are similar to those for formula quantities of special nuclear material in § 73.26(b). The regulations in § 73.26(b) require that shipments be scheduled to avoid delays and stops, and to ensure timely delivery of the shipment. The NRC agrees that improvements are needed in the planning and coordination of shipments and has addressed this concern in the rulemaking. This issue is discussed in the following paragraph titled ''Why Preplan and Coordinate SNF Shipments?''

Comments on the NRC's Handling of Request 6 of PRM–73–10 in the Rule:

One comment specifically addressed request 6 of PRM–73–10 in the context of a petition item. The State of Nevada indicated that the NRC's proposed rule has incorporated the substance of its request by requiring additional planning

and scheduling requirements for SNF shipments. The State of Nevada elaborated that the proposed rule requires licensee preplanning and coordination with corridor States to ensure minimal shipment delays, arrange State law enforcement escort arrangements, and coordinate safe haven locations, requires development of normal operation and contingency procedures (including responses to actual, attempted, or suspicious activities), and the training of all shipment personnel so that they could properly respond to a safety or safeguards event. The State of Nevada concluded by indicating that the proposed rule fully addressed their concerns.

NRC's Response to the Request 6 Comments:

Based upon the comment from the State of Nevada, no changes to the rule language were made. In general, there was strong support from the States and industry on the inclusion of the preplanning and coordination requirements in the rule. Specific comments relative to the preplanning and coordination requirements in the rule are discussed further in Section III, ''Summary and Analysis of Public Comments on the Proposed Rule,'' Issues 7 through 21 of this document.

Request 7 of PRM–73–10: Amend § 73.37(d) to require that all SNF rail shipments be made in dedicated trains. The same NRC security requirements apply to a SNF rail shipment, regardless of whether the shipment was made using a dedicated train or a mixed-use train. In either case, the licensee making the shipment is required to implement the security measures (both hardware and personnel) contained in the NRC's regulations during the entire duration of the shipment. The NRC considers the same level of security will be obtained regardless of whether the shipment is made in a dedicated train or mixed-use train. Thus, this item is not addressed as a part of the rule.

Comments on the NRC's Handling of Request 7 of PRM–73–10 in the Rule:

Five commenters specifically addressed Request 7 of PRM–73–10. The State of Nevada indicated that developments since 1999 have eliminated the need for an NRC requirement for mandatory use of dedicated trains. Nevada indicated that in 2004, the Nuclear Energy Institute (NEI) issued a statement supporting use of dedicated trains for rail shipments of SNF, and in 2005, DOE adopted a policy of using dedicated trains for SNF shipments. The commenter indicated that DOE's 2008 Supplemental Environmental Impact Statement provides that it is DOE's policy ''to use dedicated trains for most shipments'' to a repository, and the TSA and PHMSA rail security regulations adopted in 2008 virtually require use of dedicated trains for SNF shipments. The State of Nevada further elaborated that as of 2010, all rail shipments of SNF, except DOE shipments of naval reactor SNF, are expected to use dedicated trains exclusively, and rail carriers may decide to use dedicated trains for naval SNF shipments. The State of Nevada also indicated that the new security requirements included in the proposed rule will make general freight rail shipments of SNF impractical.

A commenter from WIEB indicated that while the NRC does not require the use of dedicated trains for all rail SNF shipments, it does require SNF shipments have armed escorts along the entire route, and that shipments be scheduled to avoid delays and stops (e.g. in classification yards). The WIEB indicated that the net effect of the new § 73.37 requirements, in combination with other safety and cost considerations, is that dedicated trains are required for cross-country SNF transport. According to the commenter, dedicated trains should be required in cross-country SNF rail transport. The WIEB elaborated that a 2006 study of SNF transport published by the National Academies Press found that ''there are clear operational, safety, security, communications, planning, programmatic, and public preference advantages that favor dedicated trains.'' The commenter also indicated that the committee strongly endorses DOE's decision to transport SNF and high-level waste to a Federal repository using dedicated trains.

The CSG Midwestern indicated that although the Midwestern States understand the NRC's rationale for not requiring dedicated trains for SNF shipments, such a requirement would enhance shipment security. A commenter from RAMTASC indicated that since the NRC determined that the same security provisions would be in place regardless of the type of train service, and both mixed use and dedicated train service would have the same security requirements, that it was a ''good call'' by the NRC not to require dedicated trains.

A commenter from the public also agreed that dedicated trains for SNF rail shipments should not be required. The commenter indicated that as the NRC reasoned, as long as the same security measures exist for the single and multi-use trains, then requiring dedicated trains would simply enhance the logistic and economic cost of transport.

NRC's Response to the Request 7 Comments:

Four out of five of the commenters supported the NRC's approach to dedicated trains for SNF shipments. The comments do not require any change to the rule language, which is further discussed in Section III, ''Summary and Analysis of Public Comments on the Proposed Rule,'' Issue 40 of this document.

H. Why require procedures and training for the security of SNF in transit?

Sections 73.37(b)(3)(v) and (b)(4) require that licensees shipping SNF develop normal operating and contingency procedures. These procedures are to cover notifications, communication protocols, loss of communication and responses to actual, attempted, or suspicious activities. The revisions also require drivers, accompanying personnel, railroad personnel and other movement control personnel to be adequately trained in normal operating and contingency procedures. These requirements will ensure that all personnel associated with the shipment are properly trained and prepared to perform their roles and responsibilities relative to the physical protection of SNF in transit. These revisions address, in part, Requests 3 and 6 of PRM–73–10.

I. Why require a telemetric position monitoring system or an alternative tracking system for continuous monitoring of SNF shipments?

The current rule, § 73.37(b)(4), requires that the licensee's physical protection system include a communications center, which is staffed continuously by at least one individual who monitors the progress of the SNF shipment. The revisions reflect the availability of new technology that can provide licensees more active control over the shipment. The revisions in § 73.37(b)(3)(i) replace the term ''communications center'' with the term ''movement control center.'' The term ''movement control center'' is used for consistency with physical protection terminology in other parts of the regulations and to better define the role and responsibilities of the facility. The movement control center is defined in § 73.2. Section 73.37(b)(3)(iii) specifies that the movement control center must monitor the shipment continuously; i.e., from the time of delivery of the shipment to the carrier for transport until safe delivery of the shipment at its final destination, and must immediately notify the appropriate agencies in the event of a safeguards event under the provisions of § 73.71.

In addition, § 73.37(c)(5) and 73.37(d)(4), for road and rail shipments respectively, require movement control centers to use a telemetric position monitoring system or an alternative tracking system to monitor the location and status of shipments at all times, which provides a real time indication of any potential threats. A telemetric position monitoring system is a data transfer system that captures information by instrumentation and/or measuring devices about the location and status of a transport vehicle or package between the departure and destination locations. The gathering of this information permits remote monitoring and reporting of the location of a transport vehicle or package. Radiofrequency identification (RFID) and global positioning systems (GPS) are examples of telemetric position monitoring systems. Since the movement control center is required to respond to any actual, attempted, or suspicious activities, the new requirements will mitigate the likelihood of theft, diversion, or radiological sabotage of SNF shipments.

J. Why preplan and coordinate SNF shipments?

The regulations require limited shipment preplanning and coordination with the NRC, States, and LLEAs. For example § 73.37(f) regulation requires an advance notification to the Governor(s) or the Governor's designee(s) by mail to be postmarked at least 7 days before transport of a shipment within or through the State; and requires a messenger-delivered notification to reach the Office of the Governor or Governor's designee at least 4 days before transport of a shipment within or through the State. Some States indicated that the notification requirements were insufficient to adequately plan for a SNF shipment. In addition, § 73.37(b)(7) requires licensees to obtain advance approval from the NRC of the planned road and rail SNF shipment routes, but did not require prior State coordination of the route. The revisions will ensure that the affected States have early and substantial involvement in the management of SNF shipments by participating in the initial stages of the planning, coordination and implementation of the shipment.

Section 73.37(b)(1)(iv) requires licensees prior to transport of SNF within or through a State to preplan and coordinate SNF shipment information with the Governor(s) or Governor's designee(s) of the States through which the shipment will transit in order to: (1) Ensure minimal shipment delays; (2) arrange for State law enforcement escorts; (3) coordinate movement control information, as needed; (4) coordinate safe haven locations; and 5) coordinate the shipping route. These requirements will ensure that no unusual event associated with the shipment goes unnoticed or unreported. These revisions mitigate the risk of theft, diversion, or radiological sabotage of a SNF shipment. These revisions address, in part, Requests 3 and 6 of PRM–73–10.

K. Why require constant visual surveillance by armed escort?

Section 73.37(b)(9) requires constant visual surveillance by an escort when a shipment is stopped. It does not specify whether the escort should be armed. The revised § 73.37(b)(3)(vii)(C) will ensure that when a shipment is stopped, at least one armed escort maintains constant visual surveillance. The constant surveillance by an armed escort while a shipment is stopped provides assurance that attempts by an adversary either to perform radiological sabotage in place, or to gain control of the transport to move it to another location are impeded or stopped. Section 73.37(b)(3)(vii)(C) addresses parked or stopped road shipments, rail shipment stops in marshland, and docked U.S. waters shipments. It also requires periodic reports of shipment status to the movement control center by the armed escort. Section 73.37(b)(3)(vii)(C) provides adequate assurance that SNF shipments are protected from theft, diversion, or radiological sabotage when stopped.

L. Why require two-way redundant communication capabilities?

Sections 73.37(c), 73.37(d), and 73.37(e) provide for redundant communication capabilities; however, the requirements were too specific, in that the use of citizens band (CB) radios and radiotelephones were required. In view of the continued advancements in technology, any specific method of two-way communication cited could become obsolete in the near future. Instead of specifying an acceptable communications technology, the revisions describe the performance characteristics of the communications capabilities. This change gives licensees the flexibility to determine the best means of meeting the performance requirement.

Sections 73.37(c)(3), 73.37(d)(3) and 73.37(e)(4) require the establishment of two-way communication capabilities for the transport vehicle and escorts to ensure contact between the movement control center and LLEAs at all times. The revisions also require the establishment of alternate capabilities for the transport vehicle and escorts to contact the movement control center. The alternate communications cannot be subject to the same interference factors as the primary means. The same interference factors are defined as any two systems that rely on the same hardware or software to transmit their signal (e.g., cell tower, proprietary network). These requirements provide for continued communication between movement control personnel, which will ensure the prompt reporting of any incident that could lead to theft, diversion, or radiological sabotage.

M. Why require background investigations?

1. What is the objective of the background investigations requirements for those with unescorted access and access authorization relative to SNF in transit?

Section 73.38 is a new section added to the rule that requires licensees to conduct background investigations of those individuals being considered for unescorted access or access authorization relative to SNF in transit. The main objective of the background investigations is to ensure that those individuals who have unescorted access to SNF in transit and those individuals who have access to Safeguards Information relative to the SNF shipment, including, but not limited to armed escorts, drivers, and movement control personnel, are trustworthy and reliable and do not constitute an unreasonable risk to the public health and safety or common defense and security. These background investigations are similar to those already in place for unescorted access to a commercial nuclear power reactor in § 73.56(d), ''Background Investigation.''

2. What is the basis for the fingerprinting requirements in the rule?

Section 149 of the AEA requires that any person who is permitted unescorted access to radioactive materials subject to regulation by the Commission be fingerprinted for Federal Bureau of Investigation (FBI) identification and criminal history records check. However, Section 149 also requires that the Commission make a determination that such radioactive material is of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks before the Commission can exercise the authority provided by Section 149.

Pursuant to Section 149 of the AEA, the Commission has determined that the transportation of irradiated fuel (SNF) is of such significance to the public health and safety or the common defense and security as to warrant fingerprinting and background checks for those individuals who have such access to the materials in transit. Persons who have ''unescorted access'' to this material for purposes of Section 149 are persons accompanying the shipment of SNF during transit who have direct access and maintain control over the SNF. These persons may include, but are not limited to, the driver, armed escorts, and movement control center personnel.

Therefore, under the authority granted by Section 149 of the AEA, this rule imposes a requirement for fingerprinting as a prerequisite to granting unescorted access to SNF in transit. The criminal history records check obtained as a result of that fingerprinting will be used by licensees as part of the overall background investigation to determine the trustworthiness and reliability of these individuals prior to permitting unescorted access.

3. What are the components of a background investigation?

Section 73.38(d) lists the requirements for a background investigation, including: informed consent, fingerprinting for an FBI identification and criminal history records check, verification of true identity, employment history evaluation, verification of education and military history, credit history evaluation, local criminal history review, and character and reputation determination.

Under § 73.38(e), it is the licensee's responsibility to make a trustworthiness and reliability determination of an individual who has unescorted access or access authorization relative to a SNF shipment. It is expected that licensees will use their best efforts to obtain the information required to conduct a background investigation to determine the individuals' trustworthiness and reliability.

The full credit history evaluation requirement, in § 73.38(d)(6), reflects the NRC's intent that all financial information available through credit reporting agencies is to be obtained and evaluated because it has the potential to provide highly pertinent information. The NRC recognizes that some countries may not have routinely accepted credit reporting mechanisms, and therefore, the NRC allows multiple sources of credit history that could potentially provide information about a foreign national's financial record and responsibility.

Fingerprinting an individual for an FBI criminal history records check, as required by § 73.38(d)(3), is an important element of the background investigation for determining the trustworthiness and reliability of an individual. It can provide comprehensive information regarding an individual's recorded criminal activities within the U.S. and its territories and the individual's known affiliations with violent gangs or terrorist organizations. In addition, the local criminal history review, which is required by § 73.38(d)(7), provides the licensee with a record of local criminal activity that may adversely impact an individual's trustworthiness and reliability.

It is noted that § 73.38(d)(5)(iv) requires licensees to document any refusals by outside entities to provide information on an individual. If local law enforcement, a previous employer, an educational institution, or any other entity with which the individual claims to have been engaged fails to provide information or indicates an inability or unwillingness to provide information in a timely manner, the licensee is required to document the refusal, unwillingness, or inability to respond in the record of investigation. The licensee must also obtain confirmation from at least one alternate source that has not been previously used. An alternate source could be another person associated with the entity or institution. For example, if the human resources department of a company will not verify the employment history of the individual, an alternate source could be the individual's supervisor during the claimed period. Section 73.38(d)(10) is patterned after the requirements of § 73.56(d)(4)(iv).

4. What information should the licensee use to determine that an individual is trustworthy and reliable?

The licensee will use all of the information gathered during the background investigation, including the information received from the FBI, in making a determination that an individual is trustworthy and reliable. The licensee may not determine that an individual is trustworthy and reliable and grant them unescorted access to SNF in transit until all of the information for the background investigation has been obtained and evaluated. The licensee may deny an individual unescorted access based on any information obtained at any time during the background investigation. Section 73.38(e) includes a provision for licensees to document their determinations of trustworthiness and reliability. However, as required by section 149c(2)(c) of the AEA, the licensee may not base a final determination to deny an individual unescorted access solely on the basis of information received from the FBI involving: (1) An arrest more than 1 year old for which there is no information of the disposition of the case; or (2) an arrest that resulted in dismissal of the charge or an acquittal. If there is no record on the disposition of the case, it may be that information on a dismissal or acquittal was not recorded.

5. How frequently would a reinvestigation be required?

The rule includes a provision, § 73.38(h), that requires a reinvestigation every 10 years to help maintain the integrity of the program. This reinvestigation requirement is necessary, because an individual's financial situation or criminal history may change over time in a manner that can adversely affect his or her trustworthiness and reliability. The reinvestigation process includes fingerprinting, FBI identification and criminal history records check, local criminal history review and credit history check. The reinvestigation does not include employment verification, education verification, military history verification, or the character and reputation determination.

6. Are licensees required to protect information obtained during a background investigation?

Yes. Sections 73.38(f)(1) and (f)(2) will require licensees to protect the information obtained during a background investigation. Licensees will only be permitted to disclose the information to the subject individual, the individual's representative, those who have a need-to-know to perform their assigned duties to grant or deny unescorted access, or an authorized representative of the NRC. These revisions are consistent with the requirements of § 73.57(f).

7. Could a licensee transfer personal information obtained during an investigation to another licensee?

Yes. Section 73.38(f)(3) includes a provision that a licensee will be able to transfer background information on an individual to another licensee if the individual makes a written request to the licensee to transfer the information contained in his or her file.

8. Which records are required to be maintained?

Section 73.38(f)(5) requires licensees to retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for 5 years after the individual no longer requires unescorted access to SNF in transit.

N. Why enhance shipment notifications to the NRC?

The current regulations in § 73.72(a)(4) require a licensee to notify the NRC by phone at least 2 days before the shipment commences. The rule revises § 73.72(a)(4) to require 2 additional notifications of the NRC, one to be made 2 hours before the shipment commences, and the other to be made when the shipment reaches its final destination. These additional notifications allow the NRC to monitor SNF shipments, and to maximize its readiness in case of a safeguards event. The notification of shipment completion allows the NRC to resume normal operations.

To further enhance notification of the NRC, the revision removes the § 73.72(b) notification exemption for short-duration shipments of SNF that are transported on public roads. Currently, the requirements of § 73.72(b) exempt licensees who make a road shipment or transfer with one-way transit times of one hour or less between installations of the licensee from providing advance notification of the shipment to the NRC. The amendment requires that the NRC be informed of any SNF shipment on a public road so that the NRC is able to monitor SNF shipments and to maximize its readiness in case of a safeguards event. These revisions mitigate the risk of theft, diversion, or radiological sabotage of a shipment.

III. Summary and Analysis of Public Comments on the Proposed Rule

The proposed rule was published on October 13, 2010 (75 FR 62695), for a 90-day public comment period that was to end on January 11, 2011. After receiving several requests to extend the comment period, the NRC published on January 10, 2011 (76 FR 1376), a notice extending the public comment period until April 11, 2011. The NRC received 17 comment letters. The commenters included State organizations, licensees, industry organizations, individuals, and a Federal agency. The following paragraphs include a summary of the comments received and the NRC's response to the comments.

Issue 1: General Comments

Ten commenters provided general comments relative to the proposed rule. In general, there was strong stakeholder support for the rule to enhance the security of SNF in transit. However, some commenters supported the rule and offered comments on areas that could be clarified or improved.

Comment 1: The State of Nevada strongly endorsed the proposed rule. The commenter indicated that the proposed rule was necessary, because there have been significant changes in the threat environment, which affect both current and future SNF shipments. The State of Nevada stated that the proposed rule reflected realistic assessments of changes in the threat environment since the terrorist attacks of September 11, 2001. The State of Nevada elaborated that the proposed rule was necessary because of the greater understanding, achieved since 1999, of the potentially disastrous consequences of successful acts of terrorism or sabotage against SNF shipments. The State of Nevada also indicated that the provisions of the proposed rule, coupled with other NRC actions since 2001, would incorporate all of the regulatory changes requested by the State of Nevada in its 1999 petition for rulemaking (PRM–73–10). The State of Nevada further indicated that their three requests which were denied—changes to the design basis threat, a comprehensive assessment of attack consequences, and the mandatory use of dedicated trains—have been largely satisfied by other developments subsequent to the events of September 11, 2001.

Comment 2: The Minnesota Homeland Security and Emergency Management agency (MNHSEM) generally supported the overall rulemaking.

Comment 3: The Michigan State Police Emergency Management & Homeland Security Division and the Traffic Safety Division (MISP) supported the general intention of the proposed rule.

Comment 4: The Missouri Department of Natural Resources (MODNR) commended the NRC for its decision to establish by rule ''acceptable performance standards and objectives for the protection of SNF shipments from theft, diversion, or radiological sabotage,'' as the current regulation solely addresses potential radiological sabotage of SNF shipments. The commenter indicated that this was an appropriate post-September 11, 2011, change.

Responses to Comments 1–4: The NRC appreciates the support for the rulemaking. These comments do not require any change in the rule language.

Comment 5: The NEI commended the NRC for proactively addressing the security of SNF transportation and indicated that there were several positive attributes to the rule. The commenter indicated that through this rulemaking, the NRC was ensuring a sound and predictable regulatory framework for the anticipated significant number of future SNF shipments. However, the commenter indicated that considerable additional work was needed on the proposed rule, and that the NRC should take measures to re-propose the rule, including the holding of a series of public meetings to obtain stakeholder views. The NEI identified three general areas in which improvements were recommended. These areas were: (1) To clarify that the design basis threat for protecting the SNF shipment against malevolent groups is a shared responsibility between licensees and law enforcement authorities, especially relative to armed escorts; (2) to clearly delineate the roles of DOT and NRC in the protection of SNF in transit; and (3) to clarify that route selection is based upon the performance of a vulnerability assessment by the NRC. The NEI also recommended that the NRC convene a series of stakeholder workshops in view of the events at the Fukushima Daiichi nuclear power plant in Japan. The commenter further indicated that events at the Japan Fukushima Daiichi nuclear power plant would increase stakeholder interest relative to the proposed rule. Nevertheless, the commenter's final general comment was that the rule's reliance on preplanning and coordination between entities involved in shipments provides desirable flexibility within which reactor licensees, common carriers, along with Federal, State and local authorities, can work together to develop effective plans and protocols to assure the security of irradiated reactor fuel in transit. The commenter further indicated that this flexibility should be preserved in the rule.

Response to Comment 5: The NRC appreciates the comments of support for this rulemaking. With regards to re-proposing the rule, the NRC agrees that clarifications and improvements could be made to the proposed rule. The areas NEI identified as needing clarification have been incorporated into the final rule, as appropriate, and are specifically discussed under Issues 7, 8, 10, 13, 20, 27, 29, 32, and 47. The NRC disagrees that these changes are significant

enough to warrant the re-proposing of the rule as suggested by NEI.

The NRC has taken significant measures to obtain stakeholder views on this rulemaking and does not believe that a series of stakeholder workshops is necessary. The NRC has participated in 10 public meetings and Webinars to ensure stakeholder participation. Two of these meetings were hosted by NEI. The NRC normally has a 75-day public comment period for proposed rules, whereas, the comment period for the SNF in transit proposed rule was 180 days.

In addition, with regard to the assumption that the Japan Fukushima Daiichi nuclear power plant events would create more interest in the proposed rulemaking, this assertion is not supported. The tragic events in Japan began in early March 2011 and the comment period ended on April 11, 2011. There were not a significant number of comments received subsequent to the Japan events. In fact, NEI was the only commenter that mentioned Japan Fukushima Daiichi nuclear power plant events.

Comment 6: The California Highway Patrol (CHP) supported enhancing the security requirements that apply to the transportation of SNF and appreciated the opportunity to comment on the proposed rulemaking before final implementation. The CHP indicated that updating and improving the existing regulations is a step in the right direction since the consequences of this type of shipment falling into the wrong hands could be devastating to not only California, but to the country as a whole. The commenter also indicated that the protection of the public is of the utmost concern to them, and that the safe and secure shipment of SNF requires coordination and cooperative collaboration between various Federal, State, and local government agencies. The CHP further elaborated that it is important for our organizations to work together to create a safe and secure environment for transportation of SNF shipments. The commenter also indicated that there are some points within the proposed rule that it believed warranted further clarification.

Comment 7: The WIEB indicated that they strongly supported the purposes of the proposed rule, but had concerns regarding several of its elements.

Comment 8: The Private Citizen-Hardin supported the proposed rule updating SNF transportation security requirements and recommended publication of a final rule subject to comments.

Responses to Comments 6–8: The NRC is responding to the general statements made by the commenters. The NRC agrees that clarifications and improvements should be made to the proposed rule and has incorporated changes into the final rule, as needed. These comments have been divided into various issues. The CHP's comments are discussed and addressed under Issues 4, 8, 11, 38 and 53. The WIEB's comments are discussed and addressed under Issues 19, 20, 32, and 40. The Private Citizen-Hardin's comments are discussed under Issues 3, 8, 34, 39, 42, 43, 44, 49, and 50.

Comment 9: The RAMTASC stated that they were hopeful that the final rule would ensure objective security and safety criteria for SNF shipments, and that it would ensure that political influence on route selection would be minimized.

Comment 10: Nuclear Infrastructure Council indicated that they were hopeful that the final revised rule will support increased security without negative effects on safety, or unnecessary constraints on industry operations. They were also hopeful that the final rule will ensure that objective security and safety criteria are used for routing decisions and that political influence on route selection is minimized.

Responses to Comments 9–10: The NRC agrees that the final rule would support increased security of SNF in transit. The NRC also agrees that the rule's provisions, especially those relative to preplanning and coordination, provides a framework within which licensees, common carriers, along with Federal, State and local authorities can work together to develop effective plans and protocols to assure the security of SNF in transit.

Issue 2: Radiological Sabotage Definition § 73.2

Comment: One commenter from RAMTASC stated that the NRC did not specifically address economic or social disruption, but did expand the definition of radiological sabotage to include theft and diversion in the guidance document for the rule. The commenter indicated that caution would be needed in the way protection against theft or diversion of shipments is pursued; that the security role should remain the province of specially trained security escorts required for all shipments; and that security response training of other shipment personnel should be limited to ensuring they understand the authority and responsibility of the armed escorts and support them as required.

Response: The NRC agrees with this comment and has added clarifying language to the rule to address these comments. The following clarifying changes were made: (1) In § 73.37(a)(1)(i), a reference to the definition of ''armed escort'' in § 73.2 was added; (2) in § 73.37(b)(3)(i), a reference to the definition of ''movement control center'' in § 73.2 was added; and (3) in § 73.37(b)(3)(v), the language was revised to clearly indicate that the transportation security procedures should address the roles and responsibilities of all personnel involved in the planning, monitoring and execution of the physical protection of SNF in transit. In addition, the accompanying guidance document clearly delineates the roles and responsibilities of all these personnel, especially armed escorts.

Issue 3: Metric System § 73.37(a)(1)

Comment 1: The State of Nevada supported the revisions of the section to include both the metric and English units, and the clarification that the term ''irradiated reactor fuel'' means ''SNF.''

Response to Comment 1: The comment expressed agreement with the proposed revisions. As such, no change to the rule language is required.

Comment 2: One commenter (Private Citizen—Hardin) recommended that the proposed language ''. . . total external radiation dose rate in excess of 1 Sv (100 rems) per hour at a distance of 0.91 meters (3 feet) from any accessible surface without intervening shielding'' be changed to ''total external radiation level greater than 1 Gray (100 rad) per hour at a distance of 1 meter (3.28 feet) from any accessible surface, without regard to any intervening shielding.''

Response to Comment 2: The NRC agrees with this comment and notes that the International Atomic Energy Agency (IAEA) standard for physical protection of nuclear material, INFCIRC 225/rev. 5, specifies a ''radiation level'' in units of Gray/hr (rad/hr) in applying the self-protecting standard. In order to maintain consistency with the IAEA, all references to the self-protecting standard will use Gray (rad) as the units. Additionally, the phrase ''0.91 meters (3 feet)'' has been changed to ''1 meter (3.3 feet).''

Issue 4: Removal of Distinction Between Heavily Populated and Other Areas § 73.37(a)(1)

Comment: Four comments were received on this issue, three from State organizations (State of Nevada, CHP, and the CSG Midwestern) and one from the transportation industry (RAMTASC). There was overall support from the States and industry for requiring armed escorts for the entire

road and rail route. The State of Nevada supported the proposed rule revisions, which removed the distinction for armed guard requirements between heavily populated areas and other areas through or across which a SNF shipment may pass. The State of Nevada agreed that these revisions would address Requests 4 and 5 of PRM–73–10.

One State commenter (CHP) indicated that the removal of the distinction between heavily populated areas and other areas would provide consistency in the level of protection of the shipment for the entire route. The CSG Midwestern agreed with the decision to require the same security measures along the entire route rather than have different requirements for highly populated areas. The State commenter indicated that the change will eliminate the likelihood of potential areas of vulnerability along the shipment route for theft, diversion, or radiological sabotage. A commenter from industry (RAMTASC) indicated that an armed escort for the entire route was already incorporated in most SNF shipments plans, and incorporating that change into the rule was sensible.

Response: The comments expressed agreement with the proposed revisions. As such, no change to the rule language is required.

Issue 5: Performance Objectives § 73.37(a)(2)

Comment: The State of Nevada supported all aspects of the revisions to § 73.37(a)(2), ''Performance Objectives.''

Response: The comments expressed agreement with the proposed revisions. As such, no change to the rule language is required.

Issue 6: Performance Objectives: Recommended Language § 73.37(a)(2)(ii)

Comment: The DOE Naval Reactors Program (DOE NRP) recommended that the language in proposed § 73.37(a)(2)(ii) be changed to include the highlighted text and would read as follows: ''Delay and impede attempts at theft, diversion, or radiological sabotage of SNF shipments as appropriate considering threat characteristics, shipment characteristics, and the primary requirement for personnel to provide for their own safety until adequate response forces arrive.''

Response: To provide clarity, the NRC will strike ''until response forces arrive'' from § 73.37(a)(2)(ii) and will add language to the guidance document stating that armed escorts are neither required nor expected to take offensive action against aggressors (e.g., actively pursuing and/or apprehending suspected aggressors), but rather are expected to assume a defensive posture in order to delay and impede attempts at theft and diversion in addition to attempts at radiological sabotage of SNF shipments as appropriate, considering threat characteristics, shipment characteristics, and the primary requirement for personnel to provide for their own safety. The NRC will also add language to the guidance document stressing that it is imperative for armed escorts, drivers or other accompanying personnel to contact response personnel without delay as soon as they detect a threat to the shipment or themselves, but not to exceed 15 minutes after discovery. In addition, in § 73.37(a)(1)(i), a reference to the definition of ''armed escort'' in § 73.2 was added for clarity.

Issue 7: Preplan and Coordinate §§ 73.37(b) and (b)(1)

The Commission specifically requested input from the States on the rule language regarding preplanning and coordination with States on SNF shipments. Five comments were received on this issue: four from State organizations and one from the nuclear industry. There was strong support for inclusion of the preplan and coordinate section in the rule.

Comment 1: The Illinois Emergency Management Agency (IEMA) thanked the NRC for its efforts to recognize States as co-regulators in the transportation of SNF and other high activity shipments. The commenter indicated that States like Illinois who are active in the regulation of radioactive material shipments offer practical experience and background knowledge that will help the NRC with its goal of ensuring the safe and secure transport of SNF. The commenter applauded the NRC for their efforts to bring shipment planning to the forefront and for recognizing that early coordination with States on issues like routing, identification of safe havens and other important aspects of shipping is paramount to the success of any SNF campaign.

Comment 2: The CSG Midwestern indicated that States particularly supported the inclusion of a new section 73.37(b)(1)(iv), requiring licensees to ''preplan and coordinate shipment information with the Governor of a State, or the Governor's designee.''

Comment 3: The MODNR stated that it supported inclusion of a new section 73.37(b)(1)(iv), which requires licensees to ''preplan and coordinate shipment information with the Governor of a State, or the Governor's designee.'' The commenter indicated that this requirement provides the mandate needed for licensees to discuss sensitive information with State and local officials, planners, and emergency responders who play a role in the safe and secure shipment of SNF through their jurisdictions.

Comment 4: The State of Nevada specifically endorsed the requirements for licensees to preplan and coordinate SNF shipments with States. The commenter supported the intended goal of the proposed amendments, which is to ensure that States have early and substantial involvement in the management of SNF shipments by participating in the initial stages of the planning, coordination, and implementation of the shipments.

Comment 5: One commenter from the nuclear industry, NEI, indicated that the rule's reliance on preplanning and coordination between entities involved in shipments, provides desirable flexibility within which reactor licensees, common carriers, along with Federal, State and local authorities, can work together to develop effective plans and protocols to assure the security of irradiated reactor fuel in transit. The commenter further indicated that this flexibility should be preserved in the rule.

Response to Comments 1–5: The comments expressed agreement with the proposed revisions. As such, no change to the rule language is required.

Issue 8: Deadly Force Training § 73.37(b)(1)(i)

Comment 1: The NEI indicated that a Federal use-of-force law needs to be implemented, as State statutes vary greatly. The commenter also indicated that it is not reasonable to train armed escorts to legal requirements in each jurisdiction through which a shipment passes when those requirements may vary.

Response to Comment 1: The NRC recognizes that State laws on the use of force are not uniform and that there is no Federal statute that explicitly governs the use of force by NRC licensees. However, the diverse laws provide adequate authority for armed escorts to act effectively, including the use of necessary force. In order to comply with these diverse Federal and State laws, licensees are responsible for training their armed escorts on the legal requirements regarding the use of necessary force.

The NRC disagrees that it is unreasonable for armed escorts to be trained in the use of deadly force laws in each applicable jurisdiction. The new

requirements enable licensees to preplan and coordinate shipments, and properly train non-LLEA escorts. The NEI commented that the rule's reliance on preplanning and coordination between entities involved in shipments, provides desirable flexibility within which reactor licensees, common carriers, along with Federal, State and local authorities, can work together to develop effective plans and protocols to assure the security of irradiated reactor fuel in transit. The NRC is confident that early preplanning and coordination with States will enable licenses to know well in advance which State(s) are not providing LLEA escorts, and to ensure non-LLEA armed escorts are available and properly trained in the deadly force laws of those jurisdictions. Non-LLEA armed escorts will only have to be trained on particular State laws when a State is not providing LLEA personnel as armed escorts of the shipment crossing its boundary, and the licensee will be made fully aware of this during preplanning and coordination with State and/or local authorities.

Comment 2: The NEI indicated that it was unclear whether the armed escorts provided by the licensee or LLEA are considered Hazmat Employees (49 CFR 171.8) and require DOT training (49 CFR Part 172, Subpart H) including § 172.704(a)(5), ''In-depth security training.'' The commenter further indicated that this issue can only be addressed if there is a clear understanding of the roles and responsibilities of all involved in the shipment which, in turn, requires careful coordination between licensees, shippers, Federal, and State authorities.

Response to Comment 2: The NRC is not responsible for interpreting DOT regulations. The commenter may wish to consult with the DOT for further clarification on whether an armed escort is considered a hazmat employee.

The NRC agrees with the comments concerning the need for a clear understanding of the roles and responsibilities of all involved in the shipment. As such, as discussed under Issue 2, the following clarifying changes were made: (1) In § 73.37(a)(1)(i), a reference to the definition of ''armed escort'' in § 73.2 was added; (2) in § 73.37(b)(3)(i), a reference to the definition of ''movement control center'' in § 73.2 was added; and (3) in § 73.37(b)(3)(v), the language was revised to clearly indicate that the transportation security procedures should address the roles and responsibilities of all personnel involved in the planning, monitoring and execution of the physical protection of SNF in transit. In addition, the accompanying guidance document clearly delineates the roles and responsibilities of all of these personnel, especially armed escorts.

Comment 3: A commenter (Private Citizen-No name) raised concerns about the § 73.37(b)(1) provisions that will require non-LLEA armed escorts to be instructed on the use of deadly force compatible with State and local laws and to complete a training program. The commenter suggested that implementation of this provision would be enhanced if the NRC would compile a digest of State laws concerning the use of force and the transportation of SNF, and require guards to pass a written test based on that information.

Response to Comment 3: As a part of preplanning and coordination with States, licensees will be apprised of whether the State will be providing LLEA personnel as escorts of the shipment. In the event the State(s) will not be providing LLEA personnel to escort the shipment, the licensee will have sufficient time to plan for obtaining private armed escorts and to ensure they are properly trained. This is especially important because States routinely revise and update their laws. Therefore, it would not be appropriate for the NRC to compile a digest of State laws concerning the use of deadly force and the transportation of SNF, and require armed escorts to pass a written test based on that information. The burden is on the licensee to ensure that the training requirements in § 73.37(b)(1)(i) are satisfied. The licensee is responsible for developing a training program to ensure that armed escorts are knowledgeable about the applicable laws that apply regarding the use of deadly force when providing physical protection of SNF in transit.

Comment 4: One commenter from a State organization (CHP) indicated that non-LLEA armed escorts are required to be knowledgeable of the statutes on deadly force for the States the shipment will pass through, which is consistent with the legal requirements of other private armed guards in State and local jurisdictions. The commenter further indicated that the training requirements for these non-LLEA armed guards covered in Appendix D to 10 CFR Part 73, are generic in nature, and do not address the State and local deadly force requirements for each jurisdiction the SNF shipment will potentially pass through.

One commenter from a State organization (CSG Midwestern) suggested that § 73.37(b)(1)(iv) be expanded to include a new part E: ''Confirm information on State statutes applicable to private armed guards, including the use of deadly force.'' The commenter indicated that this section was needed to require licensees to ensure that armed guards are knowledgeable of the Federal and State deadly force statutes.

Response to Comment 4: An additional provision relative to State and local deadly force requirements is unnecessary, since there is already a requirement for licensees to ensure that their armed escorts are trained in the proper use of force. Section 73.37(b)(1)(i) requires licensees to ensure that each armed escort (with the exception of LLEA personnel) is instructed on the use of force sufficient to counter the force directed at that person, including the use of deadly force. As such, licensees are responsible for assuring accurate information is provided on all applicable laws, including those laws dealing with the use of deadly force. Licensees are required to comply with the training requirements in Appendix D of 10 CFR Part 73. Appendix D specifically states that licensees are required to assure that armed individuals serving as shipment escorts, other than members of LLEAs, have completed a weapons training and qualifications program equivalent to that required of guards, as described in sections III and IV of Appendix B of 10 CFR Part 73. These training requirements ensure that each such individual is fully qualified to use weapons assigned to him or her.

Issue 9: Coordination Between Non-LLEA and LLEA Armed Escorts § 73.37(b)(1)(i)

Comment: One commenter (Private Citizen-No Name) expressed concern that there is a possibility that a mixed set of armed escorts (some LLEA personnel and some non-LLEA) could be tasked with protecting the SNF shipments at the same time, which could result in different members of the escort group operating under different understandings about what the State law on use of deadly force allows. The commenter stated that this may create confusion if the transport is attacked. The commenter suggested that information should be added to the rule to facilitate coordination between LLEA and non-LLEA armed escorts. The commenter recommended that, along with the advance notice provided to the State of an impending shipment, the licensee could include a memo summarizing the applicable laws of which they are aware, describing how they interpret these laws, and certifying that they have instructed non-LLEA armed escorts according to the guidelines in the document.

Response: The licensee is responsible for ensuring that shipments of SNF are properly escorted. Operating history indicates that there has never been a mix of LLEA personnel and non-LLEA armed escorts accompanying an SNF shipment at the same time. In the event that such a circumstance were to occur, the licensee is already responsible for ensuring that the armed escorts properly carry out their responsibilities. The licensee is free to choose the manner that it feels best achieves coordination between LLEA personnel and non-LLEA armed escorts to ensure that shipments of SNF are properly escorted. The NRC anticipates that planning and coordination with LLEAs will provide the opportunity to clarify roles and responsibilities and address any concerns or issues that either the licensee or the LLEAs might have.

Issue 10: No Technical Basis for Deadly Force/Design Basis Threat § 73.37(b)(1)(i)

Comment: One commenter (DOE NRP) expressed concern that the NRC requirement for escorts to delay or impede attempted acts of theft, diversion, or radiological sabotage could be interpreted as requiring escorts to assume an offensive combatant role and aggressively defend the shipment, regardless of the characteristics of the threat or the shipment and regardless of the threat to the escorts' safety. The commenter went on to say that they believe this interpretation would be inappropriate in consideration of the minimal risk to public health and safety from attempted acts of theft, diversion, or radiological sabotage of robust Type B SNF shipping containers in comparison to the risk to escort personnel whose standing orders require proactive engagement of any suspected security threats; and that the risk to the escorts and response forces could quickly become much greater than the risk to public health and safety, owing to the safety inherent to Type B SNF containers. The commenter also stated that they had evaluated the risks associated with transportation of naval SNF in two Environmental Impact Statements; that the statements used well established transportation impact analysis methodology, and they included specific evaluations of the potential impacts of terrorist attacks using shaped charge weapons. The statements concluded that the impacts associated with terrorist attacks are bounded, with significant margin, by the impacts of transportation accidents. Another commenter (NEI) stated that the Design Basis Threat (DBT) needs to be clearly defined to ensure that armed escorts are adequately able to counter the force directed at them; that what is proposed currently does not address this need; and that the definition of the DBT should recognize that the protection against malevolent groups is a shared responsibility between licensees and law enforcement authorities.

Response: The requirements placed on armed escorts are consistent with the definitions for ''armed escort'' and ''armed response personnel'' found in § 73.2 and are similar to language found elsewhere in 10 CFR part 73. Armed escorts are neither required nor expected to take offensive action against aggressors (e.g., actively pursuing and/or apprehending suspected aggressors). Rather, armed escorts are expected to assume a defensive posture in order to delay and impede attempts at theft and diversion in addition to attempts at radiological sabotage of SNF shipments. The NRC does not disagree with the commenter's conclusions with respect to the impact of terrorist attacks on shipments of naval SNF. However, due to the differences in design and radionuclide composition between naval SNF and commercial SNF (the latter of which is the subject of this rule), it is not relevant to use the results of studies on naval SNF to justify physical protection placed on transportation of commercial SNF. Due to national security considerations, these differences cannot be discussed further in this public forum.

The NRC does not agree that the protection of shipments of SNF is a shared responsibility between licensees and law enforcement authorities. Licensees are responsible for ensuring the safety of shipments of SNF. In carrying out this responsibility, licensees must preplan and coordinate shipments of SNF, which may include arrangements with local law enforcement agencies for their response to an emergency or a call for assistance along the route or escorting the shipment. Both the current rule and the proposed rule provide for the armed escort role to be filled either by private security personnel procured by the licensee or local law enforcement personnel. The escort responsibility is not ''shared'' as suggested by the commenter.

Issue 11: Definition of ''LLEA'' § 73.37(b)(1)(i)

Comment 1: The commenter from a State organization (CHP) indicated that the section exempts LLEA personnel from the armed escort training requirements because they should have received sufficient training on the Federal and State restrictions regarding the use of deadly force. However, the term ''LLEA'' is not defined to clarify the inclusion of county and State agencies, such as the CHP, in the exemption.

Response to Comment 1: The NRC has defined ''LLEA'', in NUREG–0561, ''Physical Protection of Shipments of Irradiated Reactor Fuel.'' Consistent with that definition, ''LLEA'' shall mean any State, county or municipal agency that has law enforcement authority within the locality or jurisdiction through which the shipment of SNF may pass. The term is usually limited to the particular law enforcement agencies that have responsibility for responding to calls for assistance by escorts, such as county or municipal police forces, port authority police, or highway patrol. An *escort* is a person with similar duties to that of an ''armed escort,'' as defined in § 73.2, but who may or may not be armed. If unarmed, the escort is not expected to actively prevent or impede acts of radiological sabotage when met by armed adversaries. As such, the CHP and similar organizations are included in the definition of ''LLEA''.

Comment 2: One commenter from a State organization (CHP) indicated that the proposed rule should clarify the training requirements for any accredited law enforcement agency at the Federal, State, or local level.

Response to Comment 2: The NRC disagrees that clarification is needed to address the training requirements for LLEA personnel. The NRC understands that all accredited law enforcement training programs provide instructions on the appropriate use of force, including deadly force. It is NRC's position that members of LLEAs are exempt from the training requirements set forth in Appendix D to 10 CFR Part 73. The NRC anticipates that planning and coordination with LLEAs will provide the opportunity to clarify roles and responsibilities and address any concerns or issues that either the licensee or the LLEAs might have.

Issue 13: Certification of Transfer § 73.37(b)(1)(iii)

Comment: A commenter from the nuclear industry (NEI) indicated that the regulation as proposed leaves it up to the preplanning activities to define the type of written certification required. The commenter indicated that this was another positive example of the flexibility of the proposed rulemaking.

Response: The comments expressed agreement with the proposed revisions. As such, no changes to the rule language is required.

Issue 14: Preplanning With States § 73.37(b)(1)(iv)

Comment 1: Two commenters from State organizations (CSG Midwestern and MODNR) recommended that adding a minimum timeframe for preplanning and coordinating shipments with States would be helpful to ensure that States have early and substantial involvement in the management of SNF shipments.

Response to Comment 1: The NRC agrees that a minimum timeframe for preplanning and coordinating shipments with States would be helpful. The rule text and the guidance document were changed to recommend that States be contacted for preplanning purposes no later than 2 weeks prior to a shipment or prior to the first shipment in a series of shipments.

Comment 2: Two commenters from State organizations (CSG Midwestern and MODNR) recommended that preplanning and coordination include offsite response teams (e.g., hazmat teams).

Response to Comment 2: The NRC does not agree with the recommendation to add hazmat teams in the preplanning and coordination activities. The NRC and DOT have strict requirements that licensees and carriers must follow to ensure the safe transport of SNF. The NRC does not have regulatory authority to require the DOT to include hazmat teams in licensee security preplanning and coordination efforts.

Issue 15: Delays and Stops § 73.37(b)(1)(iv)(A)

Comment: Three comments from State organizations (IEMA, CSG Midwestern and MODNR) expressed concern that the emphasis in the proposed rule on minimizing stops and delays will lead shippers and carriers to believe they can use this requirement to avoid State mandated inspections and that it may also impact negotiations for stopping points during the planning phase. Two commenters (IEMA and CSG Midwestern) requested that the NRC encourage State participation in the Commercial Vehicle Safety Alliance (CVSA) North American inspection standard and process for highway shipments of SNF as a way to reduce the time necessary for stops at State borders, and that the NRC should, therefore, engage with the States and other Federal agencies to establish a reciprocal inspection program for rail shipments. One commenter (MODNR) suggested the addition of language that clarifies that the purpose of minimizing stops and delays is not to eliminate inspections by the various States. The commenter further requested that the proposed rule and guidance document clarify that the language ''minimize intermediate stops and delays'' should allow for inspections by the States at the first secure location upon entry into the State by road, or at an appropriate predetermined location for rail shipments.

Response: Licensees that ship SNF by highway or rail must abide by all applicable Federal and State requirements, including requirements imposed by DOT. Neither the rule nor the guidance document grants licensees the authority to bypass mandatory State or Federal inspections. The request that the NRC encourage State participation in the CVSA inspection standard and process is outside the scope of this rulemaking.

Issue 16: Arrange for Positional Information Sharing When Requested § 73.37(b)(1)(iv)(C)

Comment: One commenter (CSG Midwestern) asked if the NRC intended for licensees to use a telemetric position monitoring system that is accessible to the States and the NRC.

Response: The NRC does not require licensees to use a telemetric position monitoring system that is accessible to the States and the NRC. During the preplanning and coordination phase of a shipment, licensees are required to discuss with the Governor, or the Governor's designee, of each State through which the shipment will pass, an arrangement for sharing positional information about a shipment when requested by a State. If positional information is requested by a State along the route, the licensee should coordinate with the State as to the frequency and method for providing such information as a part of the preplanning and coordination activities.

Issue 17: Safe Havens §§ 73.37(b)(1)(iv)(D) and 73.37(b)(1)(vi)(A)

Comment: Two comments (CSG Midwestern and IEMA) were related to safe havens. One comment (IEMA) requested clarification with respect to who has the final determination regarding the location of safe havens, indicating that States should have the final determination on the location of safe havens within its borders, as the State has the best working knowledge of its infrastructure, emergency response coordination and local law enforcement capabilities. Another comment (CSG Midwestern) expressed concern that the requirement for licensees to ''develop route information, including the identification of safe havens'' does not sufficiently capture the intent of ''minimizing movement . . . through heavily populated areas'' and recommended that the guidance document be revised so that licensees understand that preplanning and coordinating with States on route selection is intended to keep shipments out of heavily populated areas.

Response: The NRC agrees that each State has the best working knowledge of its infrastructure, emergency response coordination and local law enforcement capabilities within its borders. However, the identification of acceptable safe havens along a proposed shipment route is the responsibility of the licensee, who should preplan and coordinate the safe havens in conjunction with the States during the route planning phase. In addition, depending on the departure and arrival destinations of a shipment, highway construction along the preplanned route, detours, etc., it is not always possible for shipment routes to completely avoid heavily populated areas. However, the guidance document was amended to include the concept of minimizing movement through heavily populated areas as much as practicable.

Issue 18: Shortest Route § 73.37(b)(1)(v)

Comment: One comment (MNHSEM) recommended that the rule language be strengthened to ensure licensees are required to preplan and coordinate with State, local, and Tribal agencies well in advance of any shipments, to ensure that the shortest most direct route is used for all shipments and to prohibit the avoidance of States that impose fees for transportation of radioactive materials.

Response: The NRC agrees that licensees should preplan and coordinate with State Governors or the Governor's designee in advance of any shipments and that the shortest most direct route should be used for all shipments when feasible. However, depending on the departure and arrival destinations of a shipment, highway construction along the preplanned route, detours, etc., it is not always possible for shipment routes to travel the shortest and most direct route. The preplan and coordinate requirements are sufficiently flexible to address these issues.

The NRC also agrees with the statement that the rule could be strengthened to ensure that licensees preplan and coordinate. The rule text and guidance document were changed to recommend that States be contacted for preplanning purposes no later than 2 weeks prior to a shipment or prior to the first shipment in a series of shipments.

In terms of the notification of Tribal agencies, this issue was addressed as a part of a separate rulemaking entitled, ''Advance Notification to Native American Tribes of Transport of Certain Types of Nuclear Waste,'' which was approved by the Commission on January 30, 2012, and was published as a final rule on June 11, 2012 (77 FR 34194). Therefore, this portion of the comment is outside the scope of this rulemaking.

Issue 19: Arrangements With LLEA § 73.37(b)(1)(v)

Comment 1: One comment (University of Missouri Research Reactor (MURR)) indicated that advance arrangements for response by LLEA to an emergency or a call for assistance during the shipment are typically made through the State Governor's Designees and not individually with local entities, and recommended adding State Governor's Designees as an option for arranging emergency response.

Response to Comment 1: The NRC agrees with these comments. The guidance document was changed by adding the State Governor's Designee as an option for arranging emergency response.

Comment 2: Another comment (CSG Midwestern) recommended adding ''security-related emergency,'' to § 73.37(b)(1)(v) to avoid confusion with other emergencies that would require the assistance of emergency response authorities in the States.

Response to Comment 2: The NRC agrees with these comments. Section 73.37(b)(1)(v) was revised to insert ''security-related'' before ''emergency.''

Issue 20: NRC Route Approval § 73.37(b)(1)(vi)

Comment 1: A commenter from NEI indicated that the proposed rule needs to clearly delineate the relationship between the roles of NRC and DOT in the protection of SNF in transit; that it is important that the NRC not make new requirements that could potentially conflict with DOT responsibilities concerning approval of routes; and that the proposed rule's ability to appropriately address the selection of shipping routes would be significantly enhanced by specifying route selection based on a vulnerability assessment.

Response to Comment 1: The NRC agrees with this comment. The discussion in the final rule on the NRC's and DOT's responsibilities was revised to provide clarification.

Comment 2: A commenter from WIEB agreed that the NRC routing criteria in the proposed rule would generally reduce risk, including the risk of radiological sabotage. However, WIEB indicated that the criteria may cause conflicts in certain situations. For example, WIEB indicated that it may be necessary for SNF rail shipments to go through heavily populated areas in order to reduce travel time and overall risk to the shipment because better quality rail track may go through urban areas. The commenter further elaborated that given the conflicts of criteria and the lack of relevant information, the NRC may not be able to pre-approve rail routes. The WIEB indicated that the NRC would not have all the relevant information and the tools needed to apply the criteria and resolve the conflicts. The commenter suggested that a better approach may be to specify the criteria that generally improve safety and reduce the risk of theft, diversion and radiological sabotage, but then to empower licensees or DOE, in consultation with States, to apply the criteria to particular shipments or shipment campaigns, using state-of-the-art assessment tools and information resources.

The WIEB also expressed concern that the implementation of DOT rules on rail route selection would not allow the NRC to pre-approve rail routes and does not support shipment preplanning in coordination with the NRC, States and LLEAs. The commenter stated that DOT rules must be revised as they apply to rail transport of SNF; that the current DOT's FRA process should be made available for review and critique by the NRC and States; and that if suitable revisions are not forthcoming, DOT's FRA process, as it applies to SNF/high level waste transport, should be revised. The WIEB commenter also expressed concern that since 10 CFR Part 73 would not apply to DOE shipments under the Nuclear Waste Policy Act of 1982 (NWPA), a significant gap in security regulation exists for what potentially would be by far the largest number of prospective shipments in the future.

Response to Comment 2: The NRC does not agree with these comments. The NRC conducted significant outreach and coordination with DOT in the development of this rule. As long as there is coordination among the licensee, the commercial carrier and the States of passage, the NRC has determined that SNF shipment primary and alternate routes for highway and rail can be developed that satisfy both DOT and the NRC requirements and guidelines. Ultimately, it is the responsibility of the licensee to ensure that both DOT and the NRC route selection criteria requirements are met, as is explicitly stated in the guidance document and as required by § 71.5. In addition, licensees should weigh the criteria for route selection contained in the rule and the guidance document against actual route conditions both during the development of the route and prior to using the route, especially if there is a long delay between approval and usage. Any perceived conflicts in the criteria will be discussed with the licensee and resolved during the NRC's route approval process. The NRC recognizes that licensees will have to work closely with rail carriers in the development of proposed rail routes for SNF shipments. In fact, licensees will rely heavily on rail carriers' knowledge and expertise during this process. Licensees will still be expected to apply the selection criteria as it applies to rail routes. Discussions on the suitability of and possible revisions to DOT rules for rail route selection criteria and discussions on the security of DOE shipments and NWPA are beyond the scope of this rulemaking.

Issue 21: Documenting Preplanning and Coordination § 73.37(b)(1)(vii)

Comment: One commenter (CSG Midwestern) expressed concern about the requirement for licensees to ''document the preplanning and coordination activities'' (§ 73.37(b)(1)(vii)), stating that the proposed rule does not adequately convey the type of documentation expected, nor does the guidance document provide sufficient information to help a licensee understand what type of actions are expected and when. The commenter suggested adding examples of what constitutes ''acceptable documentation,'' including but not limited to timelines for outreach to States (e.g., meetings, teleconferences), summaries of planning meeting discussions, and lists of people contacted.

Response: The NRC agrees with this comment. Examples of acceptable documentation were added to the guidance document.

Issue 22: Advance Notification Receipt by Governor § 73.37(b)(2)

Comment 1: The State of Nevada supported the proposed rule revisions in § 73.37(b)(2) regarding advance notification information for State Governors and Governors' designees.

Response to Comment 1: The comments expressed agreement with the proposed revisions. As such, no change to the rule language is required.

Comment 2: The CSG Midwestern indicated that it was understandable why the NRC changed the wording to specify that licensees are required to

provide advance notification ''prior to the shipment of SNF outside the confines of the licensee's facility or other place of use or storage.'' The commenter indicated that the revised wording, however, leaves out an important reference to ''the transport of SNF within or through a State,'' which should be reinserted in the rule text and in the guidance document. The commenter further elaborated that absent this language in the rule text and guidance document, licensees could interpret this section as requiring notification only to the Governor or Governor's Designee of the State in which ''the licensee's facility or other place of use or storage'' is located.

Response to Comment 2: The NRC agrees with this comment. The rule text and guidance document were revised to include the wording that was inadvertently omitted.

Comment 3: One commenter (IEMA) requested that the NRC reconsider the existing time line for advance notification to the States. The commenter recommended that the advanced notification to the States should be postmarked at least 10 days prior to the commencement of a shipment and arrive on the Governor's or his/her designees' desk a minimum of 7 days before a shipment is scheduled to depart. Another commenter (MODNR) requested a change to the advance notification provision so that notifications to the States and NRC, regardless of the delivery mode, should be received 10 days prior to the shipment. Both commenters indicated that the additional time would reduce the coordination and staffing burden on States and provide an additional ''cushion'' for State agencies tasked with providing safeguards communications to other State agencies with a need-to-know or who may be participating in inspection or security operations.

Response to Comment 3: The NRC agrees with the comments suggesting that a minimum 10-day notification to the Governor or his/her designee for notifications by mail. The rule text and guidance document were changed to provide that the advance notification by mail to the Governor or Governor's designee should be postmarked at least 10 days prior to the commencement of a shipment. With regard to the comment that all other delivery methods also are given 10 days for receipt by the State, the NRC does not agree with this comment fully. However, in the rule text and guidance document, the minimum timeframe for all other modes of delivery of the notification was increased from 4 days to 7 days for arrival to the Governor or the Governor's designee.

Comment 4: One commenter (CSG Midwestern) noted that § 73.37(f) would require licensees to immediately conduct an investigation of a shipment that is lost or unaccounted for after the designated no-later-than arrival time in the advance notification. The commenter also noted that the section on advance notification (§ 73.37(b)(2)), however, does not refer to a ''designated no-later-than arrival time,'' and that if the ''estimated date and time of arrival of the shipment at the destination'' in § 73.37(b)(2)(iii)(C) is intended to be the ''designated no-later-than arrival time,'' it should be so stated.

Response to Comment 4: The NRC does not agree with this statement. The only arrival time mentioned in § 73.37(b)(2) is the estimated time of arrival; we consider this to be synonymous with the no-later-than-arrival time referred to in § 73.37(f).

Issue 23: Advance Notification Postponement and Cancellation § 73.37(b)(2)(iv)

Comment: Two comments (IEMA and CSG Midwestern) were received on the requirements for revisions and cancellation notices for SNF. The commenters noted that allowing licensees open ended delays or an unlimited number of revisions prior to cancelling a shipment impacts a State's ability to adequately manage its resources to complete the inspections required by DOT and provide escorts on a timely basis.

Response: Section 73.37(b)(1)(iv) of the rule requires NRC licensees to preplan and coordinate shipments with States. The purpose of preplanning and coordinating shipments is to allow States to allocate their resources in an efficient manner. Preplanning and coordination could be used to eliminate or make States aware of potential shipment delays on a schedule that would allow States time to efficiently deploy or redeploy its resources. It is anticipated that States would share ''best practices'' acquired during the preplanning and coordination of shipments among States and with NRC licensees to encourage shipment practices that might minimize delays and unnecessary stops as shipments transit multiple States. Section 73.37(b)(1)(iv) allows flexibility for both States and licensees to plan shipments to occur within a specific shipment window, with the mutual understanding that shipments delayed beyond that window would need additional coordination or planning. The NRC believes that the issue of the multiple delays should be addressed through the preplanning and coordination process.

Issue 24: Advance Notification Cancellation Notice § 73.37(b)(2)(v)

Comment: Two comments (MISP and CSG Midwestern) were received on the requirement to send shipment cancellation notices to the Governor or the Governor's designee. One comment (MISP) requested that the notification process and detail be specified (i.e., how the notification is to be delivered, time line (pre-event or post-event), information to be conveyed (reasons for cancellation), rescheduling (if known), etc.). The CSG Midwestern also requested that the cancellation notice requirement include the words ''as soon as possible'' or similar language so that licensees will understand the sense of urgency that cancellation notices must be timely in order to avoid situations in which State resources are committed unnecessarily.

Response: The NRC agrees with these comments. The guidance document will be changed to provide specific information relative to implementing this requirement.

Issue 25: Transportation Physical Protection System General § 73.37(b)(3)

Comment 1: The State of Nevada fully supported the new requirements in the proposed transportation physical protection in § 73.37(b)(3).

Response to Comment 1: The comments expressed agreement with the proposed revisions. As such, no change to the rule language is required.

Comment 2: The DOE NRP supported the following rule requirements relative to armed escorts: (1) They should be properly vetted for access authorization; (2) they should maintain continuous surveillance of the shipment; (3) they should be independent of the carrier's organization; and (4) they should have multiple communications capabilities to call for help in response to suspicious activity by anyone, including carrier personnel. The commenter indicated that escorts for naval reactor SNF shipments currently meet all these new requirements, and considered these requirements appropriate for armed escorts.

Response to Comment 2: The comments expressed agreement with the proposed revisions. As such, no change to the rule language is required.

Issue 26: Armed Escort Function Recommended Language § 73.37(b)(3)(i)

Comment: The DOE NRP recommended that § 73.37(b)(3)(i) be revised to indicate that armed escorts

will ''guard'' as opposed to ''protect'' the SNF shipment.

Response: The requirements placed on armed escorts are consistent with the definitions for ''armed escort'' and ''armed response personnel'' found in § 73.2, and are similar to language found elsewhere in 10 CFR Part 73. Section 73.2 provides the following definition, ''*Armed escort* means an armed person, not necessarily uniformed, whose primary duty is to accompany shipments of special nuclear material for the protection of such shipments against theft or radiological sabotage.'' The NRC declined to make this change.

Issue 27: LLEA and Movement Control Center § 73.37(b)(3)(ii)

Comment: Three comments, one from NEI and two from the transportation industry (Secured Transport Services, LLC (STS) and RAMTASC), were received that related to the duties of the movement control center. All three expressed concern that communications personnel located in a remote facility are not in the position to effectively ''direct physical protection activities,'' that this function is best served by the commander of the private escort force/LLEA escorts with direct knowledge of the events as they unfold on the scene of the incident.

Response: The NRC agrees with the comments that the movement control center should coordinate and not direct the physical protection activities. The wording of § 73.37(b)(3)(ii) was revised to reflect this change. The language in § 73.37(b)(3)(ii) was changed to read: ''The movement control center must be staffed continuously by at least one individual who has the authority to coordinate the physical protection activities.''

Issue 28: Training for Movement Control Personnel § 73.37(b)(3)(ii)

Comment 1: One commenter (CHP) expressed concern that the proposed rule did not address the training requirements of the movement control personnel. The commenter further elaborated that the addition of §§ 73.37(b)(3)(v), and (b)(3)(vii), will require the licensees to develop, maintain, and implement written procedures for the duties of the different personnel, but does not outline the training requirements of those personnel specific to their duties and responsibilities.

Response to Comment 1: The NRC does not agree with these comments. The licensee is required to ensure that all personnel involved in the SNF shipment are trained, including movement control center personnel, and are to ensure that this training is consistent with their assigned duties.

Comment 2: Another commenter (RAMTASC) stated that the proposed rule is intended to ensure that all personnel associated with the shipment are prepared to prevent the theft, diversion, or radiological sabotage of SNF shipments; that this is a significant expansion of current responsibilities for carriers, especially considering the presence of armed escorts with each shipment. The commenter stated that with the significant turnover in rail personnel during the conduct of a shipment across the country, it is not practicable to effectively train all of these people to prevent theft, diversion, or sabotage of these shipments; that the security role should remain the province of specially trained security escorts; and that the training for shipment personnel should be limited to ensuring they understand the authority and responsibilities of the armed escorts and support them as required.

Response to Comment 2: The NRC does not fully agree with this comment. While all personnel mentioned in § 73.37(b)(3)(v)(C) are involved one way or another in the physical protection system, not all personnel will have the same level of involvement in ensuring the security of the shipment. Thus, personnel with unescorted access to SNF rail shipments are neither required nor expected to prevent the theft, diversion, or radiological sabotage of SNF shipments. Only the armed escorts accompanying a rail shipment of SNF are expected to delay and impede threats, theft or radiological sabotage of SNF and to inform LLEA of the threat and request assistance.

As such, the NRC agrees that the rule should be clarified relative to armed escorts and other movement control personnel roles and responsibilities, and added clarifying language to the rule to address these comments. The following clarifying changes were made: (1) In § 73.37(a)(1)(i), a reference to the definition of ''armed escort'' in § 73.2 was added; (2) in § 73.37(b)(3)(i), a reference to the definition of ''movement control center'' in § 73.2 was added; and 3) in § 73.37(b)(3)(v), the language was revised to clearly indicate that the transportation security procedures should address the roles and responsibilities of all personnel involved in the planning, monitoring and execution of the physical protection of SNF in transit. In addition, the accompanying guidance document clearly delineates the roles and responsibilities of all these personnel, especially armed escorts.

Issue 29: Shipment Commencement §§ 73.37(b)(3)(iii) and 73.72(a)(4)

Comment: One comment (NEI) expressed concern that the term ''shipment commences'' is too vague and recommend that within § 73.72(a)(4) ''start of shipment'' and ''shipment delivery/arrival'' be specifically defined.

Response: The NRC does not agree with this comment. The plain meaning of the terms used in §§ 73.37(b)(3)(iii) and 73.72(a)(4) adequately conveys when monitoring of the shipment and providing notification of the shipment are required.

Issue 30: Maintaining Written Logs § 73.37(b)(3)(iv)

Comment: One comment (MURR) related to the requirement for movement control center personnel and armed escorts to maintain a written log for each SNF shipment. The MURR indicated that LLEA escorts reported that keeping a log of the shipment is a major distraction that takes away from their primary function of driving and observing the shipment.

Response: The NRC does not agree with this comment. This is not a new requirement. It has been a requirement since the June 1980 amendments to 10 CFR Part 73. The intent of this requirement is that a single written log be maintained and that the entries in the log be coordinated between the armed escorts and the movement control personnel monitoring the shipment. It is the responsibility of the licensee to determine the means and methods used to maintain this log.

Issue 31: Calls to Movement Control Center § 73.37(b)(3)(vii)(B)

Comment: Two comments (STS and MURR) related to the following language in § 73.37 (b)(3)(vii)(B): ''Provide that the shipment escorts make calls to the movement control center at random intervals, not to exceed 2 hours, to advise of the status of the shipment . . .'' One commenter (STS) requested that the NRC consider changing the language to allow contact with the movement control center by persons other than the escort and by means other than calls. An example provided by the commenter was where team drivers are used, the resting driver may be able to make contact with the movement control center rather than the escort. Additionally, the commenter stated that the ''call'' can be a satellite message rather than voice communications; and that a ''macro'' message sent via satellite is safer and more secure than voice exchanges, as it

gives exact locations without being overheard, and it's a single push of a button versus dialing a phone.

Another commenter (MURR) stated that all communications between the movement control center and LLEA personnel acting as armed escorts are currently handled through the respective State Emergency Management Agency or the Governor's Designee. However, non-LLEA escorts, i.e. private armed escorts, should be required to make calls to the movement control center as stated.

Response: The NRC has revised the proposed rule to address these comments. It was not the intent of the proposed § 73.37(b)(3)(vii)(B) to prevent or require a specific method of communication between the escorts and movement control center, or prevent an intermediary (i.e., a State's emergency management agency, a State Governor's designee or other personnel accompanying the shipment) from handling and forwarding communications to and from the escorts and movement control center. It is important that the duties and responsibilities of personnel involved with SNF shipments be clear and unambiguous. It is imperative that these types of details be discussed and agreed upon in advance during the preplanning and coordination phase, and that they be documented and understood by all personnel responsible for the security of the SNF shipment. As such, although the NRC viewed ''call'' as a generic term that can include any number of communication methods, a change was made to the proposed rule. For clarity, § 73.37(b)(3)(vii)(B) was revised, replacing the words ''make calls to'' with ''communicates with.''

Issue 32: Technology Security §§ 73.37(c)(3), 73.37(d)(3), and 73.37(e)(4)

Comment 1: One commenter from NEI indicated that elimination of a mandatory CB radio requirement is an improvement given the present vastly improved state of communication capabilities in the U.S. In general, the commenter indicated that they agreed with the use of general performance requirements in lieu of prescribing the use of specific equipment which may be obsolete in the relatively near future, and that this is an example of the type of flexibility that should be broadly preserved in this rulemaking.

A commenter from WIEB indicated that the NRC was correct in noting the rapid obsolescence in the field of telemetric monitoring and tracking, and the need for performance criteria rather than specific systems specification.

Response to Comment 1: The comments expressed agreement with the proposed revisions. As such no change to the rule language is required.

Comment 2: One comment (IEMA) suggested that the rule include a requirement that licensees acting as shippers perform an Operational Security (OPSEC) assessment with regards to smart and cyber technology, which includes identifying those actions that can be observed by adversary intelligence systems, determining indicators that hostile intelligence systems could use to derive critical intelligence, and implementing measures that eliminate or reduce the vulnerabilities of friendly actions to adversary exploitation. The commenter expressed concern that the use of smart phones, smart media, and social networking to communicate creates vulnerabilities. The commenter further elaborated that it would be prudent for the NRC to require licensees and their contractors involved in the transport of SNF to evaluate these technologies and reduce the release of critical geographical information associated with SNF shipments.

Another commenter (WIEB) noted that the distinctions in systems needed for preplanning and route assessment and the systems needed for tracking and monitoring in operations are rapidly converging and recommended that the NRC, in coordination with DOE should consider a set of performance requirements that will spur development and deployment of advanced tracking and monitoring of SNF transport equipment, cargo, route conditions and route environs, selecting and communicating relevant information to relevant officials in highly accessible formats, and encouraging continual adoption and updating by planners and operators.

Response to Comment 2: The NRC does not agree with these comments. Requiring OPSEC assessments and encouraging the development of advanced tracking and monitoring systems are activities beyond the scope of this rulemaking. NRC regulations do not require licensees to protect SNF shipments in this fashion. In addition, § 73.37(g) requires that Safeguards Information, including information related to the shipment schedule and shipment location, be protected against unauthorized disclosure. This requirement applies to the licensee, State officials, State employees and any other individuals with access to such information. It is the responsibility of the holder of such information to develop the means and methods required to protect this information.

Comment 3: A commenter (CSG Midwestern) wanted to know how the NRC will ''track and actively monitor'' shipments that are in transit, and whether the NRC will have direct access to the same ''telemetric position monitoring system'' that the licensee uses. The commenter recommended that the rule should require licensees to use a telemetric position monitoring system for shipments by sea as well as those by road or rail; that shipments of SNF might travel by barge on the Great Lakes or rivers in the Midwest, and it is important, therefore, for Midwestern State agencies to be able to get accurate information on the location and status of such shipments.

Response to Comment 3: The NRC does not routinely track or monitor SNF shipments. This is the responsibility of the licensee, via the movement control center. With regards to the requirements for continuous monitoring of sea shipments within U.S. territorial waters; i.e., travel by barge on the Great Lakes or rivers, this requirement is included under § 73.37(b)(3). Nevertheless, this comment points out that further clarification is needed relative to § 73.37(e). The title of this section is changed from ''Shipments by sea'' to ''Shipments by U.S. waters.'' In addition, in the first paragraph, the phrase ''is by sea'' is being replaced with ''traveling on U.S. waters.'' This will ensure that licensees understand that the security of all waterborne SNF shipments must meet the general provisions of § 73.37(b) as well as the specific requirements in § 73.37(e). Appropriate changes will also be made to the guidance document.

This change is consistent with language used by the U.S. Coast Guard to describe U.S. oceanic and coastal waters (33 CFR 329.12). Security of sea shipments between 3 and 12 nautical miles out is the responsibility of the Coast Guard, which also publishes detailed security requirements pertaining to U.S. ports (33 CFR Subpart H, Maritime Security). Replacing ''sea'' with ''U.S. waters'' in § 73.37(e) clarifies that it is the NRC's intent to ensure it has visibility of, and that licensees provide a level of protection for SNF waterborne domestic shipments, and for exports and imports, from the time the import enters the 3-mile zone until it arrives at a U.S. port, and from the time the export departs a U.S. port until it leaves the 3-mile zone.

Comment 4: A commenter (NEI) indicated that the requirement specified in § 73.37(c)(3) that requires redundant communication capability ''at all times'' is overly prescriptive. The commenter indicated that it has the potential to

overly complicate plans to mitigate a loss of communications equipment and it should be changed to require ''reasonable assurance'' of redundancy.

Response to Comment 4: The NRC has determined that clarification of this rule language is needed to address the comment. It was not the intent of § 73.37(c)(3) to require redundant communication capability ''at all times'' as suggested by the commenter. Section 73.37(c)(3) requires that two-way communication between the movement control center, the transport vehicle, the escort vehicle and LLEA is provided or available at all times. Given the current advancements in communications technology, requiring redundant communication ability not subject to the same failure modes as the primary communication such that two-way communication is possible at all times is not overly prescriptive. However, a review of the relevant sections reveals that the clarification is needed. Therefore, §§ 73.37(c)(3), (d)(3) and e(4) were revised to improve understanding of the intent by adding the following phrase to the rule text. ''To ensure that 2-way communication is possible at all times, alternate communications should not be subject to the same failure modes as the primary communication.''

Issue 33: Contingency and Response Procedures § 73.37(b)(4)

Comment: The State of Nevada fully supported the provisions on contingency and response procedures in § 73.37(b)(4).

Response: The comments expressed agreement with the proposed revisions. As such, no change to the rule language is required.

Issue 34: Contingency Response § 73.37(b)(4)(iv)

Comment: One comment (Private Citizen-Hardin) recommended that a new paragraph (F) be added after § 73.37(b)(iv)(E) to require licensees (or their monitoring center) to notify the NRC of transportation safeguards events in accordance with § 73.71.

Response: The NRC does not agree with this comment. The revisions suggested are already included in the rule. Sections 73.37(b)(3)(iii) and 73.37(b)(3)(v)(C) require reporting of safeguards events under the provisions of § 73.71.

Issue 35: Deadly Force: Recommended Language § 73.37(b)(4)(iv)(D)

Comment: One comment (DOE NRP) suggested revising the language of § 73.37(b)(4)(iv)(D) to read: ''Take necessary steps to delay and/or impede threats, thefts, or radiological sabotage of SNF as appropriate considering threat characteristics, shipment characteristics, and the primary requirement for personnel to provide for their own safety until response forces arrive, and . . .''

Response: The NRC agrees with this comment in part. The requirements placed on armed escorts are consistent with the definitions for ''armed escort'' and ''armed response personnel'' found in § 73.2, and are similar to language found elsewhere in 10 CFR Part 73. However, to provide clarity, the NRC will strike ''until response forces arrive'' from § 73.37(a)(2)(ii), and will add language to the guidance document stating that armed escorts are neither required nor expected to take offensive action against aggressors (e.g., actively pursuing and/or apprehending suspected aggressors), but rather are expected to assume a defensive posture in order to delay and impede attempts at theft and diversion in addition to attempts at radiological sabotage of SNF shipments as appropriate, considering threat characteristics, shipment characteristics, and the primary requirement for personnel to provide for their own safety. The NRC will also add language to the guidance document stressing that it is imperative for armed escorts, drivers or other accompanying personnel to contact response personnel without delay as soon as they detect a threat to the shipment or themselves, but not to exceed 15 minutes after discovery.

Issue 36: General: Shipments by Road § 73.37(c)

Comment: The State of Nevada endorsed all aspects of § 73.37(c).

Response: The comments expressed agreement with the proposed revisions. As such, no change to the rule language is required.

Issue 37: Shipments by Road: Transport Vehicle Armed Escorts § 73.37(c)

Comment: One commenter (MURR) stated that the requirements of § 73.37(c)(1)(i) and (ii) could not be met because the second driver of the transport vehicle cannot be armed. The commenter indicated that research reactors use commercial carriers which do not use armed drivers. In addition, the commenter indicated that States cannot provide two armed escorts (one in front and one in the back) for the shipment as an option.

Response: The NRC does not agree with this comment. The rule does not require that the driver be armed. It only requires that an escort in the cab be armed.

Issue 38: Two Weapons § 73.37(c)(2), 73.37(d)(2), and 73.37(e)(2)

Comment: Two commenters (CHP and STS) requested that clarification of the types of weapons that armed escorts are required to carry be added to § 73.37(c)(2), 73.37(d)(2), and 73.37(e)(2).

Response: The NRC included the requested clarification in the rule guidance document. In the guidance document (NUREG–0561, Revision 2), the NRC provides recommendations relative to each weapon's separate and distinct response capabilities (e.g., a handgun and a rifle and/or a shotgun).

Issue 39: Movement Center § 73.37(c)(6) and (d)(4)

Comment: One comment (Private Citizen–Hardin) recommended that new subparagraphs (c)(7) and (d)(5) be added to require licensees (or their monitoring center) to notify the NRC of transportation safeguards events in accordance with § 73.71.

Response: The NRC does not agree with this comment. Sections 73.37(b)(3)(iii) and 73.37(b)(3)(v)(C) already require reporting of safeguards events under the provisions of § 73.71.

Issue 40: Shipments by Rail: § 73.37(d) and 73.37(d)(1)

Comment 1: The State of Nevada supported the revisions in § 73.37(d) regarding rail shipment of SNF. The commenter specifically identified support for elimination of the distinction between heavily populated areas and other areas along rail shipment routes regarding the armed escort requirements; weapons requirements for armed escorts; eliminating specific types of communications technology, and supported the use of a telemetric position monitoring system or an alternative tracking system. One industry commenter supported the NRC's decision not to require dedicated trains for the shipment of SNF and thought it was a good decision.

Response to Comment 1: The comments expressed agreement with the proposed revisions. As such, no change to the rule language is required.

Comment 2: One commenter (RAMTASC) expressed concern that avoiding populated areas could require shipments on lower quality rail tracks which would increase the accident risk. While the commenter agrees with the NRC's decision to not incorporate specific routing requirements into the rulemaking, they questioned whether the required planning with States would not have the same result. The

commenter stated that the specific roles of States versus the railroads versus the shipper of record were not well defined, and if consensus were required on shipment routes, that would potentially allow States to block shipments along the safest routes by refusing to approve routes recommended by the railroads, which would serve to undo the carefully crafted responsibilities in the Rail Safety Improvement Act of 2008. The commenter indicated that this Act requires railroads to use objective data as the basis for selecting rail routes that provide the best overall combination of safety and security. The commenter further indicated that the role of States needed to be limited to an advisory role to preclude politicizing the route selection process. The commenter concluded by recommending that the NRC rule should simply defer to the DOT final rulemaking for balanced consideration of safety and security data in consultation with States.

Response to Comment 2: The NRC does not agree with this comment. It is the licensee's responsibility to preplan and coordinate SNF rail shipments with the Governor of each State through which the shipment will pass and with the rail carrier(s). As mentioned elsewhere in the response to comments, licensees are also required to comply with all DOT safety and security requirements pertaining to SNF shipments, which would include any requirements imposed on rail shipments of SNF. None of the proposed requirements in this rulemaking would supersede or vacate the provisions in the Rail Safety Improvement Act of 2008.

Comment 3: Two commenters (WIEB and CSG Midwestern) stated that dedicated trains should be required in cross-country rail transport of SNF shipments. One commenter (WIEB) cited a 2006 National Academies' study of SNF transport which the commenter said found that ''there are clear operational, safety, security, communications, planning, programmatic, and public preference advantages that favor dedicated trains. The committee strongly endorsed DOE's decision to transport SNF and high-level waste to a Federal repository using dedicated trains.'' Another commenter (RAMTASC) indicated that since both mixed use, and dedicated train service would have the same security requirements, the NRC declining to require dedicated trains was a good call.

Response to Comment 3: The comments expressed agreement with the proposed revisions. As such, no change to the rule language is required.

Comment 4: One commenter (MODNR) recommended the following revision: ''A shipment car is accompanied by two armed escorts or two special agents/police officers of the host railroad if the railroad agrees to provide them.'' The commenter stated that local law enforcement may not be the most practical escorts to have on a train that will traverse multiple States and that this change would allow, but not require, the railroad to provide their own armed escorts if they desire. The commenter concluded by stating that some railroads would prefer to utilize their own employees, who would be familiar with rail policies and procedures. The same commenter stated that inspections of rail shipments by States have been a contentious issue in the past, as railroads do not plan stops near State borders. The commenter recommended that § 73.37(d) be clarified to address this issue by adding a statement similar to the following: ''Physical inspections of rail shipments by representatives of individual States, if they are requested by State representatives, may occur at places other than at the State line if agreed to by the representatives of the various States and the railroad.'' The commenter stated that a State line is usually an inconvenient place to inspect a train, as there might be no highway access or crossings and a State line could be located where the only way to reach the border is to walk miles down the railroad track. The commenter expressed concern that an inspection at a State border may also affect the railroad's operations, because there may not be a siding available at the State's border, resulting in blocking trains in both directions. The commenter recommended that licensees coordinate with the States and the railroads to confirm a safe location for inspections; the result may be that several States in a region will inspect a shipment in one location, rather than in each individual State.

Response to Comment 4: No changes to the rule were made in response to these comments. It is the licensee's responsibility to preplan and coordinate SNF rail shipments with State Governors through which the shipment will pass and with the rail carrier(s). Nothing in the rule would require or prohibit the use of armed escorts provided by the rail carrier if they met NRC requirements for filling such a position. Discussion of State inspections of rail shipments is beyond the scope of this rulemaking.

Issue 41: Shipments by Sea: General § 73.37(e)

Comment: The State of Nevada supported the rule revisions in § 73.37(e) regarding advance notification information for State Governors and Governors' designees.

Response: The comments expressed agreement with the proposed revisions. As such, no change to the rule language is required.

Issue 42: Shipments by Sea: Movement Control Center § 73.37(e)

Comment: One commenter (Private Citizen-Hardin) recommended that § 73.37(e) be changed to require telemetric position monitoring for sea mode SNF shipments within U.S. territorial waters but permit import and export SNF shipments to be tracked by vessel monitoring systems or by U.S. Coast Guard monitoring and response capabilities. The commenter also recommended that requirements for a movement monitoring center similar to the language in § 73.37(c) and (d) be specified for sea shipments and that language to require licensees (or their monitoring center) to notify the NRC of transportation safeguards events in accordance with § 73.71 be added.

Response: Continuous monitoring of SNF shipments, including sea shipments while within U.S. territorial waters is already addressed in § 73.37(b)(3). For sea shipments, licensees may utilize a telemetric position monitoring system or some other system to achieve compliance with this performance objective. Nevertheless, this comment points out that further clarification is needed relative to § 73.37(e). The title of this section is changed from ''Shipments by sea'' to ''Shipments by U.S. waters.'' In addition, in the first paragraph, the phrase ''is by sea'' is being replaced with ''traveling on U.S. waters.'' Replacing ''sea'' with ''U.S. waters'' in § 73.37(e) clarifies that it is the NRC's intent to ensure that NRC has visibility of, and that licensees provide a level of protection for SNF waterborne domestic shipments, and for exports and imports, from the time the import enters the 3-mile zone until it arrives at a U.S. port, and from the time the export departs a U.S. port until it leaves the 3-mile zone.

In addition, the guidance document was revised to clarify requirements for sea shipments within U.S. waters. With regard to the reporting of transportation safeguards events, this request is already addressed in § 73.37(b)(3)(iii) and 73.37(b)(3)(v)(C), which require reporting of safeguards events under the provisions of § 73.71.

Issue 43: Investigations § 73.37(f)

Comment 1: The State of Nevada supported the new requirement for an immediate investigation if a shipment is lost or unaccounted for after the designated no-later-than arrival time.

Response to Comment 1: The comments expressed agreement with the proposed revisions. As such, no change to the rule language is required.

Comment 2: One commenter (MISP) requested that more detail be added to this section with respect to the specifics of an investigation.

Response to Comment 2: The NRC does not agree with this comment. The specifics of an investigation are developed by the licensee. Under § 73.37(b)(4), licensees must establish, maintain and follow written contingency and response procedures, which would include procedures for responding to lost or unaccounted for SNF shipments. These written procedures must be made available for inspection by the NRC upon request.

Comment 3: One commenter (Private Citizen-Hardin) recommended the deletion of § 73.37(f), and that any investigation of lost or unaccounted SNF is completed in accordance with the NRC's proposed revisions to § 73.71.

Response to Comment 3: The NRC does not agree with this comment. The NRC has determined that the protection of SNF from theft, sabotage, or diversion is vital to public health and safety and the common defense and security. As such, the NRC has instituted coordinated and correlated protective measures systems to ensure prompt notification of any safeguards event relative to SNF in transit. The NRC has determined that the investigative requirements in § 73.37(f) to be an important part of the protective measures system for SNF in transit. In addition to the requirements of § 73.37(f), § 73.37(b)(3)(iii) and 73.37(b)(3)(v)(C) require licensees to notify the NRC of lost or unaccounted SNF shipments under § 73.71.

Issue 44: Safeguards Information §§ 73.37(g) and 73.38(c)(iv)

Comment 1: The State of Nevada expressed support for the proposed requirements for the protection of Safeguards Information in § 73.37(g).

Response to Comment 1: The comments expressed agreement with the proposed revisions. As such, no change to the rule language is required.

Comment 2: Two comments (IEMA and Private Citizen—No name) were related to protection of shipment information. The IEMA recommended that the NRC further examine those plans, documents and communications that should be classified as Safeguards Information to ensure that information security is maintained at the highest level necessary and those individuals responsible for maintaining the appropriate controls on Safeguards Information are properly trained.

Another commenter (Private Citizen-No name) expressed concern that there seemed to be very little in the rule regarding the protection of sensitive information relative to SNF in transit. The commenter indicated that controlling the available information about the shipments could go a long way to preventing attacks. The commenter also recommended that a section be added that requires that information only be given to certain individuals. In addition, the commenter suggested that it be required that individuals who are only accompanying a shipment for a certain part of the shipment only be given information about the segment, and not for the entire trip.

Response to Comment 2: The NRC agrees that additional clarifying information could be added to the rule to address these comments. A new section § 73.37(b)(1)(vii) was added to reflect the requirements of § 73.22, which address Safeguards Information relative to SNF shipments. The requirement in § 73.22 addresses the restricting of Safeguards Information to those with a ''need to know.''

Issue 45: Implementation of Rule § 73.38(a)(3)

Comment: One commenter (MURR) indicated that an implementation date of 30 days after the final rule is published in the **Federal Register** is too restrictive on licensees. The commenter suggested that licensees should have the flexibility to implement the new requirements through either their physical security plan or their transportation security plan. In addition, the commenter suggests that in light of the burden to implement the new requirements with limited resources, that a 90-day period for implementation should be used instead of a 30-day period.

Response: The NRC agrees with the comment and has revised the rule text to indicate that the requirements can be implemented either by the licensee's physical security plan or transportation security plan. With regards to the implementation date for licensees, the rule was revised to provide an effective date of 90 days after publication in the **Federal Register** as suggested by the commenter.

Issue 46: General: Background Investigation Requirements § 73.38

Comment 1: The State of Nevada supported the new requirements regarding personnel access authorization, and licensee responsibilities for establishing and maintaining an effective access authorization program. The commenter endorsed the background investigation requirements.

Comment 2: The DOE NRP commenter supported the background investigation requirements for private armed escorts, and indicated that escorts for naval reactors shipments currently meet all these new requirements, and considered the requirements appropriate for these escorts.

Response to Comments 1 and 2: The comments expressed agreement with the proposed revisions. As such, no change to the rule language is required.

Issue 47: Persons Subject to Background Investigation Requirements: § 73.38(a)

Several comments were raised relative to whom the background investigation requirements should apply.

Comment 1: The DOE NRP indicated that the proposed access authorization program with requisite background checks could lead to significant operational and cost impacts from commercial carriers handling shipments. The commenter indicated that carriers are already subject to basic personnel security measures in their hazardous materials security plans in accordance with DOT regulations (49 CFR 172.802(a)(1)). The commenter indicated that the proposed NRC requirements go far beyond the current DOT requirements. The DOE NRP questioned whether the railroads' personnel policies would support such extensive security requirements, and if not, the impact on shipment operations and the cost to institute such extensive personnel security requirements just for SNF shipments could be difficult to overcome. The commenter also indicated that it is not clear that the security benefit gained from imposing such personnel security requirements on carriers is worth the cost. The commenter suggested that the NRC review the proposed requirements relative to rail and highway carriers. The commenter also indicated if these access authorization requirements are added to the regulations, railroads may decide to only perform the requisite background checks on a minimal number of their personnel. These circumstances could result in delaying SNF shipments.

Comment 2: A commenter from a State organization (MODNR) indicated that the rule should clarify whether requirements for background investigations apply to State railroad inspectors, as they may need to be in proximity to the shipment in order to conduct an inspection, but will not need unescorted access to the shipment. The rule states, ''The background investigation does not apply to Federal, State or local law enforcement personnel who are performing escort duties.'' The commenter recommended that State railroad inspectors be added to this exemption for State personnel, or that language similar to the following be added to address this issue: ''All background checks shall be waived for State rail inspectors seeking to inspect shipments by rail who are currently in good standing and certified by the Federal Railroad Administration as an inspector in any discipline for which the Federal Railroad Administration has current responsibility in enforcing.''

Comment 3: An industry commenter (NEI) indicated that the proposed regulations make the NRC licensee responsible for background investigation. The commenter indicated that it may not be possible for licensees to ensure investigations are conducted for common carrier's and LLEA's employees or for Federal/State inspectors. The commenter indicated that the regulation should provide flexibility for this to be worked out cooperatively between the carrier and the customer. For example, carriers could conduct investigations with licensees verifying that the background investigations were properly done.

The NEI also asked whether an inspection of an SNF shipment by a State or Federal DOT inspector is considered unescorted access. The commenter indicated that clearly they must have direct access to the shipment, but they will not have control of the shipment nor would armed escorts be expected to leave their post during an inspection. The commenter further indicated that some inspectors may view an armed escort overseeing their inspections as a form of intimidation. The NEI indicated that the subject of those who might have access to a shipment other than armed escorts should be specifically addressed and background check requirements set accordingly.

Comment 4: An NRC licensee (MURR) indicated that licensees have no control over background checks performed for State employees (e.g., non-LLEA personnel) who have access to the shipment during transit, and hence, the regulations must state that licensees are not responsible for these background checks. This responsibility should be deferred to the State Governor's Designees.

Comment 5: One commenter from an industry organization wondered whether LLEA personnel were subject to the new requirements.

Comment 6: The IEMA agrees with the NRC's proposal regarding background checks for licensees as set forth in § 73.38, ''Personnel access authorization requirements for irradiated reactor fuel in transit.'' However, the IEMA believes that the requirement for background checks should include all entities that are involved with SNF shipments including Governor's designee and any State or Tribal entity that is entrusted with Safeguards Information, aids in the planning and coordination of an SNF shipment or has unescorted access to an SNF shipment. The LLEA personnel would continue to be exempted since they require a pre-employment background check. Under the proposed rule, all other entities involved with the totality of an SNF shipment should be required to comply with the background investigation requirement. The IEMA believes by requiring State and Tribal personnel to be held to the same access authorization requirements as licensees, an increased level of shipment security will be achieved.

Response to Comments 1–6: The NRC agrees that further clarification is needed relative to the persons subject to background investigations. Common carriers have no direct responsibilities under § 73.38. The licensee is responsible for assuring that all individuals who have access to Safeguards Information pertaining to a SNF shipment or unescorted access to the SNF shipment have undergone a background investigation (or fall under one of the categories for relief in §§ 73.59 or 73.61), have been determined to be trustworthy and reliable, and have a need to know. With regard to the receipt of Safeguards Information by Native American Tribes, this issue was addressed as a part of a separate rulemaking entitled, ''Advance Notification to Native American Tribes of Transport of Certain Types of Nuclear Waste,'' which was approved by the Commission on January 30, 2012, and published as a final rule on June 11, 2012 (77 FR 34194).

The NRC acknowledges that the licensee does not directly control a common carrier used to ship SNF or control whom the carrier employs. However, as noted in the comments, carriers are subject to DOT regulations that require fingerprinting and an FBI criminal history check for drivers transporting hazardous material. Spent nuclear fuel is considered to be a hazardous material under DOT regulations. The vehicle driver and accompanying personnel were included in part because they have access to SGI information pertaining to the SNF shipment. Whether these individuals come under the § 73.38 access authorization program or not, they would still need to be fingerprinted and determined to be trustworthy and reliable under the requirements of § 73.22(b). However, the NRC has revised § 73.38 to reflect that those individuals who have already completed an equivalent separate Federal background investigation program, and can provide documentation indicating that they are in good standing, could meet the requirements of § 73.38.

The NRC also agrees that further clarification is needed relative to the application of the provision to Federal and State inspectors and has added clarifying language. In response to the comments concerning background investigations for Governor's designees and LLEA personnel, § 73.59 relieves these persons from the background investigation requirements for access to Safeguards Information and § 73.61 relieves these persons from background investigation for unescorted access to SNF in transit. This section was revised to include a reference to § 73.61.

With regards to persons who receive Safeguards Information, all persons are required to obtain a background investigation unless they fall under one of the categories for relief in § 73.59. The rule has been revised to reflect the provisions in § 73.59(k) which relieves from a background investigation, ''Any agent, contractor, or consultant of the aforementioned persons who has undergone equivalent criminal history records and background checks to those required by § 73.22(b) or § 73.23(b).'' Based upon the aforementioned discussion, § 73.38 (2)(a) was revised.

Issue 48: Reinvestigations: § 73.38(h)

Comment: The MURR indicated that it feels that research reactors should have relief from this requirement since it will cause a financial burden to the facility with minimal gain. The MURR indicated that credit history evaluations should only be performed if the results obtained during the fingerprinting and FBI identification and criminal history records check and criminal history review are inconsistent, and should not be routinely required.

Response: The NRC does not agree with this comment. The reinvestigation

requirement in the rule is consistent with similar requirements contained elsewhere in 10 CFR part 73.

Issue 49: Advance Notification Editorial Correction: § 73.72

Comment 1: Two editorial comments were received (CSG Midwestern and Private Citizen-Hardin). The comments indicated that the section ''Requirements for advance notice of shipment of formula quantities of strategic special nuclear material . . .'' was incorrectly labeled as ''§ 73.71'' and it should be referenced as ''§ 73.72.''

Response to Comment 1: The NRC agrees with this editorial comment. The section was changed from ''§ 73.71'' to ''§ 73.72.''

Comment 2: The CSG Midwestern also indicated that §§ 73.72(a)(4) and 73.72(a)(5) include the statement, ''Classified notifications shall be made by secure telephone,'' and that the draft guidance document, however, refers to ''SGI notifications'' (pg. 16). In addition, the commenter indicated that the proposed rulemaking stated that ''The NRC does not regulate classified shipments of spent nuclear fuel.'' To avoid confusion, the commenter recommended that the rule should refer to ''SGI notifications,'' not ''classified notifications.''

Response: The NRC agrees with this comment. Sections 73.72(a)(1), (a)(4), and (a)(5) were changed to read: ''Classified and SGI notifications.''

Issue 50: Mode of Notification: § 73.72(a)(1)

Comment: One comment (Private Citizen–Hardin) was related to the mode required for advance notifications of shipments and recommended that—the NRC revise § 73.72(a)(1) to require secure electronic transmission of advance notifications made under this section; that secure notifications should be sent to the email addresses specified in 10 CFR part 73, Appendix A, for the NRC Headquarters Operations Center; that NRC should provide an exception to this new requirement permitting the use of written notifications (sent by U.S. mail or private courier service) only if secure electronic communications methodologies are inoperable or unavailable; and should specify acceptable encryption methods (both networks and internet emails) in regulatory guidance to achieve greater consistency and ease of use across the range of recipients.

The commenter stated that the NRC should specify in the supporting guidance documents the specific methodology licensees should use to meet the Federal Information Processing Standards (FIPS) in publication 140–2 of the National Security Agency (NSA) standards to communicate Safeguards Information or classified information, respectively. The commenter stated that the NRC should also specify the email addresses to send these notifications (both intranet and secure networks), and that this should include use of secure electronic networks or the use of encrypted emails transmitted over the internet.

The commenter also stated that with the widespread use of 20th [*sic*] century technology, the NRC should take advantage of the encryption, authentication, and non-repudiation features found in secure electronic communications to provide greater timeliness and security over SNF shipment notifications made to the NRC under this section. The commenter went on to say that both the NRC and NRC licensees possessing SNF send secure electronic communications containing Safeguards Information to and from each other on a routine basis, and that these capabilities should also be used for SNF shipment notifications, with written communications reserved for a backup role (i.e., secure electronic communications are inoperable).

Response: The NRC does not agree with this comment. The purpose of this rulemaking is to enhance the security of SNF shipments by incorporating the security requirements in applicable NRC orders as well as new requirements developed as a result of lessons learned by implementing the security orders. The actions requested by the commenters are beyond the scope of this rulemaking.

Issue 51: Notifications: § 73.72(a)(4)(ii) and (iii)

Comment 1: The State of Nevada supports the new requirements in § 73.72(a)(4), which requires licensees to notify the NRC 2 hours before the commencement of the shipment, and notify the NRC when the shipment arrives at its final destination

Comment 2: The MODNR indicated that the addition of notifications to the States 2 hours before commencement of the shipment and again once the shipment has reached its destination is very helpful. The commenter indicated that the 2-hour notification provides time for staff to reach their staging position, without unnecessary time spent in waiting for shipment arrival. The commenter further elaborated that the final notification that the shipment has reached its destination would alert the States that communications regarding the shipment can be sent without compromising the shipment's safety.

Response to Comments 1 and 2: The comments expressed agreement with the proposed revisions. As such, no change to the rule language is required.

Issue 52: Clarification in § 73.72(a)(5)

Comment: The State of Nevada supported the provision clarifying notification for schedule changes of more than 6 hours in § 73.72(a)(5).

Response: The comments expressed agreement with the proposed revisions. As such, no change to the rule language is required.

Issue 53: Removal of Exemption: § 73.72(b)

Comment 1: The State of Nevada supported the § 73.72(b) requirements that licensees inform the NRC of any SNF shipment on a public road, even those of short duration, to ensure that the NRC is prepared to respond to any emergency or safeguards event. The commenter indicated that this provision is important at reactor sites that might ship SNF casks to off-site storage facilities, or utilize trucks for intermodal transfer of shipping casks to off-site rail or barge facilities.

Comment 2: The CSG Midwestern indicated that the Midwestern States agree with the change to § 73.72 that exempts a licensee from providing advance notice for an onsite SNF shipment that ''does not travel upon or cross a public highway.''

Response to Comments 1 and 2: The comments expressed agreement with the proposed revisions. As such, no change to the rule language is required.

Comment 3: The CHP agreed with the removal of the § 73.72(b) exemption that indicated that advance notification does not have to occur for shipments or transfers of SNF as long as the one-way transit time is 1 hour or less. The commenter indicated that § 73.72 notifications only apply to the NRC.

Response to Comment 3: The NRC does not fully agree with this comment. Section 73.37(b)(2) states that the licensee must provide advance notice of shipments to both the NRC and to the Governor or the Governor's designee. Under § 73.72(b), licensees would also now be required to provide advance notice for short-duration (1 hour or less) shipments to the NRC and the State(s).

Issue 54: Regulatory Consistency and Certainty

Comment 1: One commenter (CSG Midwestern) expressed concerns about the lack of consistency between terminology used by the NRC and other agencies, i.e., DOE. The commenter

suggested that the rule would benefit from Federal agencies adopting uniform terminology in connection with safeguards and security, which would be consistent with President Obama's Executive Order 13556 on Controlled Unclassified Information.

Response to Comment 1: The NRC does not have the authority to determine what terminology other Federal agencies use when discussing safeguards and security events. This issue is outside of the scope of this rulemaking.

Comment 2: The commenter (CSG Midwestern) stated that the Blue Ribbon Commission on America's Nuclear Future has called attention to the distinction between NRC-regulated shipments of SNF and those conducted by DOE, and that the commenter is interested in learning whether the NRC requirements would apply to shipments of SNF to regional storage facilities, should the Blue Ribbon Commission recommend the siting of such facilities.

Private Citizen-Hardin recommended that the NRC clarify in the preamble to the final rule that the NRC regulates SNF shipments from NRC-regulated facilities to DOE facilities. The commenter also recommended the revision of § 73.6(d) to remove the exemption for shipments made using DOE's OST (to or from NRC licensed facilities) from NRC's recordkeeping and advance notification requirements. The commenter stated that while DOE has independent authority to establish transportation security requirements under the AEA, this is not true in all circumstances, citing the example that the NRC regulates a small number of DOE-operated facilities (two independent SNF storage installations (ISFSIs) in Idaho and one in Colorado; and a mixed-oxide fabrication facility in South Carolina). The commenter stated that shipments of SNF to or from these ISFSIs are fully subject to NRC's oversight, especially regarding advance shipment notifications and safeguards event notifications of actual or imminent hostile actions. The commenter indicated that the current language in § 73.6(d) exempts shipments made using DOE's OST (to or from NRC licensed facilities) from NRC's recordkeeping and advance notification requirements, but that this is inappropriate. The commenter elaborated that DOE's voluntary compliance with NRC's regulations for shipments made under DOE's auspices, is not the same as NRC's independent regulatory oversight of the DOE shipments that fall under the NRC's regulatory purview. The commenter further indicated that the DOE shipments that fall under the NRC's regulatory authority should be subject to the NRC's regulatory oversight, including the NRC's inspection program, and recordkeeping and advance notification requirements.

Response to Comment 2: The NRC cannot speculate on any actions that might be taken by the Blue Ribbon Commission. Therefore, it would be premature to comment on any recommendations resulting from the Blue Ribbon Commission.

The NRC agrees with the comments that licensees shipping SNF from NRC licensed facilities to DOE facilities for storage are required to comply with NRC's regulations. This is discussed in Section I, Background, subsection C, of this notice. The NRC does not agree with the commenters' suggestion that § 73.6(d) be revised to remove an exemption from certain NRC regulations for special nuclear material shipped using the DOE transportation system. This rulemaking deals with security enhancements for the shipping of SNF not special nuclear material. The § 73.6 exemptions do not apply to SNF shipments. They apply only to certain shipments of special nuclear material. Therefore, the commenter's suggestion that § 73.6 be revised is beyond the scope of this rulemaking.

Issue 55: Editorial Comment: Footnote 1

Comment: A commenter from CSG Midwestern indicated that the footnote explains that 'irradiated reactor fuel'' and ''spent nuclear fuel'' are used interchangeably, which is appropriate. The commenter further elaborated that the proposed rule also uses the term ''spent nuclear material'' in two instances, §§ 73.37(b)(1)(iv) and 73.38(j)(3)). The commenter indicated that these references should be changed to ''spent nuclear fuel'' or the rule should explain how the term is distinct from the other two terms.

Response: The NRC agrees with this comment. The terms ''spent nuclear material'' were replaced in the rule with ''spent nuclear fuel.''

IV. Discussion of the Amendments by Section

A. § 73.8(b)

The rule amends § 73.8 (b) to include the new information collection requirements resulting from the addition of the new § 73.38.

B. § 73.37(a)(1)

The rule amends § 73.37(a)(1) to include the International System of Measurement (SI) accompanied by the equivalent English units in parentheses for the weight and dose rate measurements. This is under the NRC's metrication policy (57 FR 46202; October 7, 1992), and the Metric Conversion Act of 1975, 15 U.S.C. 205a *et seq.* The rule also adds a footnote to clarify that the term ''irradiated reactor fuel,'' as used in § 73.37 means ''spent nuclear fuel.''

C. § 73.37(a)(1)(i)

The language in the current regulation solely addresses potential radiological sabotage of SNF shipments. The rule revises § 73.37(a)(1)(i) to clarify that any attempted theft or diversion of SNF shipments is also covered by this regulation. The rule also revises § 73.37(a)(1)(i) and (a)(2)(iii) to remove the distinction between heavily populated areas and other areas through or across which an SNF shipment may pass. The differentiation of security requirements based upon population densities creates potential vulnerabilities in the physical security of the shipment. The requirement of armed escorts throughout the shipment route minimizes the risk of theft, diversion, or radiological sabotage. These revisions also address Requests 4 and 5 of PRM–73–10.

D. § 73.37(a)(2)

The rule revises § 73.37(a)(2) to insert the word ''system'' after the phrase ''protection'' in ''physical protection'' to read as ''physical protection system.'' This change provides consistency in the terminology used throughout 10 CFR Part 73.

The amendment renumbers the paragraphs in § 73.37(a)(2). The current § 73.37(a)(2)(ii) becomes § 73.37(a)(2)(iii), and the current § 73.37(a)(2)(iii) becomes § 73.37(a)(2)(ii). The rule revises the current § 73.37(a)(2)(iii) to clarify that the licensee should delay, as well as impede, any attempted theft, diversion, or radiological sabotage of SNF shipments. In addition, § 73.37(a)(2)(ii) was revised to remove the phrase ''until response forces arrive.''

E. § 73.37(b)

This overall section is revised to provide a logical, step-by-step approach to the development of a physical protection system for SNF shipments that is more user-friendly.

F. § 73.37(b)(1)

The rule adds a new section entitled, ''*Preplan and Coordinate Spent Nuclear Fuel Shipments*,'' which is explained further in the following paragraphs. The amendment moves and incorporates the current § 73.37(b)(1) into a new § 73.37(b)(2).

The rule adds a new § 73.37(b)(1)(i) which requires that licensees instruct armed escorts on the use of deadly force. In addition, in response to comments on the proposed rule, this section includes a reference to the definition of ''armed escort'' in § 73.2, which ensures a clear understanding of their security role. The existing provisions of § 73.37 provide performance objectives to be achieved by the physical protection system for SNF shipments. These performance objectives are not specific about the degree of force an armed escort may use in protecting shipments.

Specifically, the licensee is to ensure that each non-LLEA armed escort delay or impede attempted acts of theft, diversion, or radiological sabotage by using force sufficient to counter the force directed at that person, including the use of deadly force when there is a reasonable belief that the use of deadly force is necessary in self-defense or in the defense of others, or any other circumstances as authorized by applicable Federal or State law. The requirements for use of deadly force are established under applicable Federal and State laws (i.e., the States through which the shipment is passing). The revision is not authorizing the use of deadly force, but instead is ensuring that the armed escorts are knowledgeable of the Federal and State statutes that apply regarding the use of deadly force. The statutes regarding the use of deadly force may vary depending on the jurisdiction in which the shipment is located. Armed escorts are expected to carry out their assigned duties, including implementation of contingency procedures in case of attack, in a manner consistent with the legal requirements applicable to other private armed guards in a particular jurisdiction. The LLEA personnel acting as escorts are exempt from this requirement since they are subject to, and should have received training on, State and Federal restrictions regarding the use of deadly force.

The rule adds new § 73.37(b)(1)(ii) and 73.37(b)(1)(iii), which are accounting and control measures that ensure that only authorized individuals receive the shipment. The requirements will reduce the risk of theft, diversion, or radiological sabotage of the SNF.

The rule re-designates § 73.37(b)(8) as § 73.37(b)(1)(iv) and revises it to include requirements for licensees to preplan and coordinate SNF shipments with States. The preplanning and coordination include efforts to minimize intermediate stops and delays, arranging for State law enforcement escorts, the sharing of positional information and the development of route information, including the location of safe havens. In addition, in response to comments on the proposed rule, a minimum timeframe for preplanning and coordinating was inserted into the rule. The rule requires licensees to contact States for preplanning and coordination no later than 2 weeks prior to a shipment or prior to the first shipment in a series of shipments. These amendments ensure that States have early and substantial involvement in the management of SNF shipments by participating in the initial stages of the planning, coordination, and implementation of the shipment.

The rule re-designates § 73.37(b)(6) as § 73.37(b)(1)(v) and revises it to make minor editorial changes. In addition, in response to comments on the proposed rule, the term ''security-related'' was inserted in front of the word ''emergency'' to read as ''security-related emergency''. This was done to avoid confusion with other emergencies that would require the assistance of emergency response personnel in the State.

The rule re-designates § 73.37(b)(7) as § 73.37(b)(1)(vi) and revises it to expand the requirements for preplanning and coordination with the NRC. Section 73.37(b)(1)(vi) requires the following: (1) The identification of safe havens along road shipment routes, (2) NRC route approval prior to the 10-day advance notice required by § 73.72(a)(2), and (3) the providing of specific information to the NRC regarding the shipment (e.g., shipper, consignee, carriers, transfer points, modes of shipment, and shipment security arrangements). In addition, § 73.37(b)(1)(vi) provides that licensees must also comply with applicable DOT routing requirements. In addition, the § 73.37(b)(1)(vi)(A) proposed rule language, ''. . . the route should include locations of safe havens . . .'' was changed to ''. . . the route shall include locations of safe havens . . .'' This change was made to incorporate language consistent with NRC's Enforcement Policy.

The rule adds a new § 73.37(b)(1)(vii), which requires the documentation of preplanning and coordination activities. In addition, the rule adds a new § 73.37(b)(1)(viii). This section was added in response to comments on the proposed rule that indicated that the NRC should clearly identify what SNF shipment information is considered Safeguards Information, and should be protected. Under § 73.22(a), information to be protected as Safeguards Information in § 73.37 includes: (1) Schedules, itineraries, arrangements with LLEA, and locations of safe havens, which is the information described in § 73.37(b)(1), and § 73.37(b)(2)(iii) through (b)(2)(v); (2) the physical security plan, which is the information described in § 73.37(b)(3); (3) the procedures for response to security contingency events, and the tactics and capabilities required to defend against attempted theft, diversion, or sabotage, which is the information described in § 73.37(b)(4); and (4) portions of inspection reports, evaluations, audits, or investigations that contain details of a licensee's or applicant's physical security system, which is the information described in § 73.37(f). In addition, according to § 73.22(a), vehicle immobilization features, intrusion alarm devices, and communications systems, including communication limitations, are also considered Safeguards Information.

G. § 73.37(b)(2)

The rule re-designates § 73.37(f), the advance notifications provision, as § 73.37(b)(2). This section was revised to reflect the final rule ''Advance Notification to Native American Tribes of Transport of Certain Types of Nuclear Waste,'' which was approved by the Commission on January 30, 2012, published as a final rule on June 11, 2012 (77 FR 34195), with an effective date of August 10, 2012, and a compliance date of June 11, 2013. In addition, the rule revisions include: (1) A reference to the NRC Web site listing contact information for State Governors and Governors' designees and Tribal official or Tribal official's designee, which will be available after the June 11, 2013 compliance date; (2) a requirement to include within the notification the license number of the shipper and receiver; and (3) a requirement to provide the estimated date and time of arrival of the shipment at the destination. Section 73.37(b)(2) also includes new recordkeeping and shipment cancellation notification requirements. In addition, in response to comments on the proposed rule, the phrase ''moving through or across the boundary of any State,'' was inserted on the first line after ''spent nuclear fuel.'' This phrase was inadvertently omitted in the proposed rule text. In addition, in response to comments on the proposed rule, § 73.37(b)(2)(i)(B) and 73.37(b)(2)(i)(C) were revised. In response to comments on the proposed rule, the § 73.37(b)(2)(i)(B) requirement that the advanced notification by mail be postmarked at least 7 days prior to the commencement of a shipment was changed to 10 days. In response to comments on the proposed rule, the § 73.37(b)(2)(i)(C) requirement that the

advanced notification by any other method must reach the office of the Governor or the Governor's designee at least 4 days before commencement of a shipment was changed to 7 days.

H. § 73.37(b)(3)

The rule adds a new § 73.37(b)(3) entitled, ''*Transportation Physical Protection Program*.'' Section 73.37(b)(3) streamlines and combines existing requirements in § 73.37(b)(3) through (5) and 73.37(b)(9) through (11).

Section 73.37(b)(3)(i) introduces the term ''movement control center,'' which replaces the term ''communication center'' used in the current regulation. The term ''movement control center'' is used for consistency with physical protection terminology and to better define the role and responsibilities of the facility. The movement control center is defined in § 73.2 as an operations center which—is remote from transport activity and which maintains periodic position information on the movement of the shipment, receives reports of attempted theft, diversion, or radiological sabotage, provides a means for reporting these and other problems to appropriate agencies, and can request and coordinate appropriate aid. In addition, in response to comments on the proposed rule, this section includes a reference to the definition of ''movement control center'' in § 73.2, which ensures a clear understanding of their security role.

The rule re-designates § 73.37(b)(4) as § 73.37(b)(3)(ii) and revises it to reflect that the movement control center personnel will have the authority to coordinate physical protection activities. The rule also adds a new § 73.37(b)(3)(iii), which clarifies the duties of the movement control center personnel. The rule re-designates § 73.37(b)(5) as § 73.37(b)(3)(iv) with minor editorial changes. The rule adds a new § 73.37(b)(3)(v), which requires licensees to develop, maintain, and implement written physical protection procedures. These procedures must address the following: (1) The shipment access controls, (2) the roles and responsibilities of the individuals responsible for the shipment, (3) the reporting of safeguards events, (4) communications protocols, and (5) normal conditions operating procedures.

The rule adds a new § 73.37(b)(3)(vi), which incorporates the recordkeeping requirements of the current § 73.37(b)(2) and (3). The rule re-designates § 73.37(b)(10) as § 73.37(b)(3)(vii)(A). It also includes the additional training requirements described in Sections III and IV of Part 73, Appendix B. This revision is a clarification of the existing requirements in § 73.37. The current provisions in § 73.37(b)(10) referred to the training requirements in 10 CFR Part 73, Appendix D, and Appendix D, in turn, referred to requirements in 10 CFR Part 73, Appendix B, Sections III and IV. For clarity, the amendment adds a direct reference to Appendix B.

The rule re-designates § 73.37(b)(11) as § 73.37(b)(3)(vii)(B). This section changes the escort's time requirements for contacting the movement control center. It is changed from ''at least every 2 hours'' to ''random intervals, not to exceed 2 hours.'' This provision also replaces the term ''communications center'' with ''movement control center.'' In addition, in response to comments on the proposed rule, § 73.37(b)(3)(vii)(B) was revised, replacing the words ''make calls to'' with ''communicates with.''

The rule re-designates the current § 73.37(b)(9) as § 73.37(b)(3)(vii)(C). It also clarifies the armed escort's responsibilities when the shipment vehicle is stopped, or the shipment vessel is docked. These revisions ensure that when a shipment is stationary at least one armed escort maintains constant visual surveillance. The rule also provides for periodic reports of shipment status to the movement control center by the armed escort.

I. § 73.37(b)(4)

The rule re-designates § 73.37(b)(2) as § 73.37(b)(4)(i)–(iii), ''*Contingency and Response Procedures*,'' and adds additional requirements. The rule adds new § 73.37(b)(4)(i) and 73.37(b)(4)(ii). These sections require licensees to develop and implement contingency and response procedures, and require licensees to train personnel in these procedures. The current requirements in § 73.37(b) did not specifically require personnel training. They only required escorts to receive instructions. The rule expressly requires that written procedures are developed and that all personnel associated with the transport and security of the shipment are adequately trained to carry out their responsibilities. A response to a safeguards event must be initiated without delay in order to have a high probability of success in protecting the shipment. The response is more likely to be effective if individuals are adequately trained in their roles and responsibilities.

The rule also adds a new § 73.37(b)(4)(iii), which incorporates the current § 73.37(b)(2) recordkeeping requirements. The rule re-designates § 73.37(b)(3) as § 73.37(b)(4)(iv). The revisions include the requirement that armed escorts take the necessary steps to delay or impede theft, diversion, or radiological sabotage of SNF in transit.

J. § 73.37(c)

The rule revises § 73.37(c)(1) by removing the phrase ''within a heavily populated area,'' after ''transportation vehicle,'' and deletes the current § 73.37(c)(2) to eliminate the distinction between heavily populated areas and other areas through which a shipment of SNF shipment may pass. A new § 73.37(c)(2) requires non-LLEA armed escorts to have a minimum of two weapons. The NRC has determined that it is prudent to require a minimum of two weapons for each armed escort.

The requirements in the current § 73.37(c)(3) describe specific acceptable types of communication devices, i.e., use of citizens band radio, radiotelephone, which may become obsolete in the near future. Instead of specifying an acceptable communications technology, § 73.37(c)(3) describes the performance characteristics of the communications capabilities.

The rule adds a new § 73.37(c)(6), which requires continuous and active monitoring of the shipment by a telemetric position monitoring system or an alternative tracking system. The revisions ensure that shipments are continuously and actively monitored by a tracking system that communicates continuous position information to a movement control center. This requirement allows the movement control center to receive positive confirmation of the location, status, and control of the shipment. These requirements ensure immediate detection of any deviations from the authorized route, which will provide a prompt notification of any emergency or safeguards event. These revisions will facilitate a more timely and effective response. In addition, the § 73.37(c)(6) proposed rule language, ''. . . These procedures will include . . .'' was changed to ''. . . These procedures shall include . . .'' This change was made to incorporate language consistent with NRC's Enforcement Policy.

K. § 73.37(d)

The rule revises § 73.37(d)(1) by removing the phrase ''within a heavily populated area,'' after ''shipment car,'' and deletes the current § 73.37(d)(2) to eliminate the distinction between heavily populated areas and other areas through which a shipment of SNF may pass. The rule adds a new § 73.37(d)(2) to require a minimum of two weapons for non-LLEA armed escorts. The rule

revises § 73.37(d)(3), which describes acceptable types of communication devices. The NRC recognizes that these devices may become obsolete in the near future. Instead of specifying acceptable communications technology, § 73.37(d)(3) describes the performance characteristics of the communication capabilities. The rule also adds a new § 73.37(d)(4), which addresses continuous and active monitoring of the shipment by a telemetric position monitoring system or an alternative tracking system. In addition, § 73.37(d)(4) proposed rule language, ''. . . These procedures will include . . .'' was changed to ''. . . These procedures shall include . . .'' This change was made to incorporate language consistent with NRC's Enforcement Policy.

L. § 73.37(e)

The title of this section is changed from ''Shipments by sea'' to ''Shipments by U.S. waters.'' In the first paragraph, the phrase ''is by sea'' is replaced with ''traveling on U.S. waters.'' The rule revises § 73.37(e)(1) by removing the phrase ''within a heavily populated area,'' after ''while docked at a U.S. port,'' and deletes the current § 73.37(e)(2) to eliminate the distinction between heavily populated areas and other areas for shipments of SNF traveling on U.S. waters. The rule adds a new § 73.37(e)(2) to require a minimum of two weapons for non-LLEA armed escorts. The rule revises § 73.37(e)(3) to eliminate the listing of communication devices. Instead of specifying acceptable communication technology, § 73.37(e)(3) describes the performance characteristics of the communication capabilities.

M. § 73.37(f)

The rule re-designates the current § 73.37(f) as § 73.37(b)(2). The new § 73.37(b)(2) requires an immediate investigation if a shipment is lost or unaccounted for after the designated no-later-than arrival time. This requirement will facilitate the location and recovery of shipments that may have come under control of unauthorized persons.

N. § 73.37(g)

The rule deletes the reference to § 73.37(f)(3) and inserts the reference to § 73.37(b)(2)(iii) to reflect the reorganization of § 73.37.

O. § 73.38

This rule adds a new § 73.38, ''Personnel access authorization requirements for irradiated reactor fuel in transit.'' Section 73.38 establishes the personnel access authorization requirements for granting an individual unescorted access or access authorization relative to SNF in transit. Section 73.38(a)(1) specifies the licensees subject to the requirements in the section. Section 73.38(a)(2) provides that licensees are required to establish, implement, and maintain the overall effectiveness of the access authorization program. Section 73.38(a)(3) provides that licensees should establish an access authorization program for SNF in transit in their physical security plan or transportation security plan. Section 73.38(b) establishes the general performance objective to ensure that the individuals subject to the access authorization program are trustworthy and reliable. Section 73.38(c)(1) specifies the individuals subject to the access authorization program. Section 73.38(c)(2) clarifies that individuals listed in §§ 73.59 and 73.63 that are relieved of the investigative elements of the SNF access authorization program.

Section 73.38(d) establishes the background investigation requirements for individuals seeking unescorted access or access authorization relative to SNF in transit. For an individual seeking unescorted access or access authorization relative to SNF in transit, § 73.38(d)(1) through (9) require licensees to conduct fingerprinting and an FBI identification and criminal history records check; verification of true identity; employment history evaluation; verification of education; military history verification; credit history evaluation; criminal history review; character reputation and determination; and obtain independent information, respectively. Section 73.38(d)(10) allows a licensee to rely upon an alternate source that has not been previously used, if the licensee cannot obtain information on an individual from their previous employer, educational institution, or any other entity with which the individual claims to have been engaged. Section 73.38(d)(10) is patterned after § 73.56(d)(4)(iv)(B).

Section 73.38(e) requires licensees to make and document trustworthiness and reliability determinations after obtaining and evaluating the information required by § 73.38(d)(1) through (9). Licensees will be required to maintain records of trustworthiness and reliability for 5 years from the date the individual no longer requires unescorted access or access authorization relative to SNF shipments.

Section 73.38(f) requires licensees to protect the information obtained during background investigations, while allowing licensees to transfer background information on an individual to another licensee if the individual makes a written request for such transfer. Section 73.38(f) allows a licensee to rely on the background information transferred from another licensee, provided that the receiving licensee verifies the name, date of birth, social security number, sex, and other applicable physical characteristics to ensure that the individual is the person whose file has been transferred.

Many individuals who will be subject to the background investigation portion of this rule may have recently satisfied similar requirements under the prior NRC orders. For such individuals, it would be unnecessary to re-fingerprint them. Thus, § 73.38(g) permits licensees to essentially re-use the results of a fingerprint check that has been created within 5 years of the effective date of the rule. This will not be ''relieving'' such individuals from the rule, but rather permitting them to satisfy the fingerprinting requirements by other means. It is important to emphasize, however, that a licensee's ability to use previous fingerprinting results is not a substitute for the licensee independently concluding that the person is suitable for access authorization pertaining to SNF in transit, including subjecting the person to all other applicable requirements of the background investigation that are required by § 73.38(d).

Section 73.38(h) establishes the requirements for reinvestigation of individuals with unescorted access to SNF in transit. Section 73.38(h) establishes completion of reinvestigations within 10 years of the last investigation. The scope of the investigation will be the past 10 years. It will consist of fingerprinting; an FBI identification and criminal history records check; criminal history review; and credit history re-evaluation. Section 73.38(i) establishes the requirements for individuals to self-report legal actions taken by a law enforcement authority or court of law to which the individual has been subject that could result in incarceration or a court order or that requires a court appearance. This provision requires the recipient of the report, if the recipient is not the reviewing official, to promptly convey the report to the reviewing official who will then evaluate the implications of those actions with respect to the individual's trustworthiness and reliability.

Section 73.38(j) establishes the requirements that licensees are required to develop, implement, and maintain written procedures for conducting the background investigations for persons applying for unescorted access or access

authorization relative to SNF in transit. The procedures should address notification of individuals denied unescorted access or access authorization, including the basis for the denial or termination. The procedures also provide for the review of the information by the affected individuals. It ensures that individuals who have been denied unescorted access or access authorization are not allowed unescorted access to SNF or access to Safeguards Information pertaining to the shipment. These individuals could be escorted by an approved individual.

Section 73.38(k) establishes the requirements that an individual has the right to correct his or her criminal history records before any final adverse determination is made. If the individual believes that his or her criminal history records are incorrect or incomplete in any respect, he or she can initiate challenge procedures. These procedures include direct application by the individual challenging the criminal history records to the law enforcement agency that contributed the questioned information. Section 73.38(l) establishes the requirements that licensees retain documentation relative to the trustworthiness and reliability determination for 5 years after the individual no longer requires unescorted access or access authorization. The rule also requires that corrected or new information be actively communicated by the recipient to other licensees.

P. § 73.72(a)

The rule revises § 73.72(a) to insert a footnote that provides, ''For purposes of § 73.72, the terms 'irradiated reactor fuel' as described in § 73.37 and 'spent nuclear fuel' are used interchangeably.

Q. § 73.72(a)(1)

The rule revises § 73.72(a)(1) to insert ''and safeguards notifications'' after ''Classified.''

R. § 73.72(a)(4)

The rule revises § 73.72(a)(4) to insert ''and safeguards notifications'' after ''Classified.'' The rule revises §§ 73.72(a)(4)(ii) and 73.72(a)(4)(iii) to require two additional notifications of the NRC. Section 73.72(a)(4)(ii) provides that a notification is made 2 hours before the commencement of the shipment and § 73.72(a)(4)(iii) provides that a notification is made when the shipment reaches its final destination. The current requirements only provided for notification of the NRC 2 days before the shipment commenced.

S. § 73.72(a)(5)

The rule revises § 73.72(a)(5) to insert ''and safeguards notifications'' after ''Classified.'' The rule revises § 73.72(a)(5) to clarify the meaning of the language ''greater than ± 6 hours.'' The revision deletes ''greater'' and inserts ''more,'' and deletes the symbol ''±.''

T. § 73.72(b)

The current provisions in § 73.72(b) exempted from NRC advance notification requirements road shipments or transfers that were one-way and had transit times of 1 hour or less. This amendment removes this exemption from the regulations. The exemption has been changed to apply only to an on-site transfer by the licensee that does not travel upon public roads. This revision ensures that the NRC is informed of any SNF shipment on a public road, even those of short duration, and the NRC is prepared to respond to an emergency or safeguards event. It will mitigate the risk of theft, diversion, or radiological sabotage of a shipment.

TABLE 1—CROSS REFERENCE BETWEEN AMENDMENTS AND EXISTING REGULATIONS

The amendments	Existing regulation
73.8(b)	73.8(b).
73.37(a)(1)	73.37(a)(1).
73.37(a)(2)	73.37(a)(2).
73.37(b)(1)(i) through (iv)	New (no existing equivalent).
73.37(b)(1)(iv)(A)	73.37(b)(8).
73.37(b)(1)(iv)(B)	New (no existing equivalent).
73.37(b)(1)(iv)(C)	New (no existing equivalent).
73.37(b)(1)(iv)(D)	New (no existing equivalent).
73.37(b)(1)(v)	73.37(b)(6).
73.37(b)(1)(vi)	73.37(b)(7).
73.37(b)(1)(vi)(A)	New (no existing equivalent).
73.37(b)(1)(vi)(B)	73.37(b)(1).
73.37(b)(1)(vi)(C)	73.37(b)(1).
73.37(b)(1)(vii)	New (no existing equivalent).
73.37(b)(1)(viii)	New (no existing equivalent).
73.37(b)(2)	73.37(b)(1) and 73.37(f).
73.37(b)(2)(i)	73.37(f)(1).
73.37(b)(2)(ii)	73.37(f)(2).
73.37(b)(2)(iii)	73.37(f)(3).
73.37(b)(2)(iv)	73.37(f)(4).
73.37(b)(2)(v	73.37(f)(4).
73.37(b)(2)(vi)	73.70.
73.37(b)(3)(i)	New (no existing equivalent).
73.37(b)(3)(ii)	73.37(b)(4).
73.37(b)(3)(iii)	73.37(b)(4).
73.37(b)(3)(iv)	73.37(b)(5).
73.37(b)(3)(v)	73.37(b)(2).
73.37(b)(3)(vi)	73.37(b)(3).
73.37(b)(3)(vii)(A)	73.37(b)(10).
73.37(b)(3)(vii)(B)	73.37(b)(11).
73.37(b)(3)(vii)(C)	73.37(b)(9).
73.37(b)(4)(i) through (iii)	73.37(b)(2).
73.37(b)(4)(iv)	73.37(b)(3).
73.37(c)	73.37(c).
73.37(c)(1)	73.37(c)(1).

TABLE 1—CROSS REFERENCE BETWEEN AMENDMENTS AND EXISTING REGULATIONS—Continued

The amendments	Existing regulation
—(none-paragraph deleted)—	73.37(c)(2).
73.37(c)(2)	New (no existing equivalent).
73.37(c)(3)	73.37(c)(3).
73.37(c)(4)	73.37(c)(4).
73.37(c)(5)	73.37(c)(5).
73.37(c)(6)	New (no existing equivalent).
73.37(d)	73.37(d).
73.37(d)(1)	73.37(d)(1).
—(none-paragraph deleted)—	73.37(d)(2).
73.37(d)(2)	New (no existing equivalent).
73.37(d)(3)	73.37(d)(3).
73.37(d)(4)	New (no existing equivalent).
73.37(e)	Title changed to Shipments by U.S. waters.
73.37(e)	73.37(4).
73.37(e)(1)	73.37(e)(1).
(none—for first half of provision—second part of provision retained in 73.37(e)(3)).	73.37(e)(2).
73.37(e)(2)	New (no existing equivalent).
73.37(e)(3)	Second part of 73.37(e)(2)—". . . an officer of the shipment vessel's crew, who will assure that the shipment is unloaded only as authorized by the licensee."
73.37(e)(4)	73.37(e)(3).
73.37(f)	73.71 reporting provisions.
73.37(g)	73.37(g).
73.38	New—incorporates background investigations.
73.72(a)(1)	73.72(a)(1).
73.72(a)(4)(i) through (iii)	73.72(a)(4).
73.72(a)(5)	73.72(a)(5).
—(none-exemption deleted from existing)	73.72(b).
73.72(b)	New (no existing equivalent—new exemption).

V. Criminal Penalties

For the purpose of Section 223 of the AEA, the NRC is amending 10 CFR Part 73 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

VI. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement States Programs,'' approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this rule is classified as compatibility Category ''NRC''; and 10 CFR part 73 in its entirety is designated as Category ''NRC.'' Agreement State Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA, or the provisions of 10 CFR. Thus, States should not adopt these program elements.

VII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC amends § 73.37, which is the requirements for the physical protection of SNF in transit; adds a new § 73.38, which establishes the requirements for a background investigation of individuals applying for access authorization to SNF shipments or SGI information pertaining to SNF shipments; and will amend § 73.72, which contains the requirements for the advance notification to the NRC of SNF along with other special nuclear material. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

VIII. Environmental Assessment and Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR part 51, the NRC has determined that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required for this rulemaking. However, the NRC has prepared an environmental assessment and, on the basis of this environmental assessment, has made a finding of no significant impact. The implementation of the security rule requirements will not result in significant changes to the licensees' facilities, nor will such implementation result in any significant increase in effluents released to the environment.

Similarly, the implementation of the security rule requirements will not affect occupational exposure. No construction of new structures or other earth disturbing activities, on the part of affected licensees, is anticipated in connection with licensees' implementation of the rule's requirements. The NRC has determined that the implementation of this rule will be procedural.

The determination of this environmental assessment is that there will be no significant impact to the public from this action. This conclusion was published in the environmental assessment that was posted to the Federal Rulemaking Web site, *http://www.regulations.gov,* for 180 days after publication of the proposed rule. The NRC invited comments on the environmental assessment. No comments were received on the content of the environmental assessment.

IX. Paperwork Reduction Act Statement

This final rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget (OMB), approval number 3150–0002.

The burden to the public for these information collections is estimated to average 2.7 hours per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Information Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS.RESOURCE@NRC.GOV;* and to the Desk Officer, Chad Whiteman, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0002), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

X. Regulatory Analysis

The NRC has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The analysis is available for inspection in the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD 20852. The analysis may also be viewed and downloaded electronically at *http://www.regulations.gov* by searching on Docket ID NRC–2009–0163.

XI. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The companies that possess or transport SNF do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810).

XII. Backfitting

The NRC has determined that the Backfit Rule does not apply to this rule, because this amendment does not add or modify any regulations to impose backfits as defined in § 50.109 or § 72.62. The regulations in Part 50.109(a)(1) defines backfitting as the modification of or addition to systems, structures, components, or design of a facility; or the design approval or manufacturing license for a facility; or the procedures or organization required to design, construct or operate a facility. The definition in § 72.62 is similar in relevant part to the definition in 10 CFR part 50. This rulemaking will impose new requirements to enhance the security of SNF in transit. It will not make any modification or addition to any systems, structures or components or the design of a facility, affect the design approval or manufacturing license of a facility, or affect the procedures or organization required to design, construct or operate a facility. Therefore, it is the NRC's determination that a backfit analysis is not required.

XIII. Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

XIV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883).

List of Subjects in 10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

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

Authority: Atomic Energy Act secs. 53, 147, 161, 223, 234, 1701 (42 U.S.C. 2073, 2167, 2169, 2201, 2273, 2282, 2297(f), 2210(e)); Energy Reorganization Act sec. 201, 204 (42 U.S.C. 5841, 5844); Government Paperwork Elimination Act sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

Section 73.1 also issued under Nuclear Waste Policy Act secs. 135, 141 (42 U.S.C, 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note).

■ 2. Section 73.8(b) is revised to read as follows:

§ 73.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 73.5, 73.20, 73.21, 73.24, 73.25, 73.26, 73.27, 73.37, 73.38, 73.40, 73.45, 73.46, 73.50, 73.54, 73.55, 73.56, 73.57, 73.58, 73.60, 73.67, 73.70, 73.71, 73.72, 73.73, 73.74, and appendices B, C, and G to this part.

* * * * *

■ 3. Section 73.37 is revised to read as follows:

§ 73.37 Requirements for physical protection of irradiated reactor fuel in transit.

(a) *Performance objectives.* (1) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a quantity of irradiated reactor fuel [1] in excess of 100 grams (0.22 lbs) in net weight of irradiated fuel, exclusive of cladding or other structural or packaging material, which has a total external radiation dose rate in excess of 1 Gy (100 rad) per hour at a distance of 1 meter (3.3 feet) from any accessible surface without intervening shielding, shall establish and maintain, or make arrangements for, and assure the proper implementation of, a physical protection system for shipments of such material that will achieve the following objectives:

(i) Minimize the potential for theft, diversion, or radiological sabotage of spent nuclear fuel shipments; and

(ii) Facilitate the location and recovery of spent nuclear fuel shipments that may have come under the control of unauthorized persons.

(2) To achieve these objectives, the physical protection system shall:

(i) Provide for early detection and assessment of attempts to gain unauthorized access to, or control over, spent nuclear fuel shipments;

[1] For purposes of 10 CFR 73.37, the terms ''irradiated reactor fuel'' and ''spent nuclear fuel'' are used interchangeably.

(ii) Delay and impede attempts at theft, diversion, or radiological sabotage of spent nuclear fuel shipments; and

(iii) Provide for notification to the appropriate response forces of any attempts at theft, diversion, or radiological sabotage of a spent nuclear fuel shipment.

(b) *General requirements.* To achieve the performance objectives of paragraph (a) of this section, a physical protection system established and maintained, or arranged for, by the licensee shall include the following elements:

(1) *Preplan and coordinate spent nuclear fuel shipments.* Each licensee shall:

(i) Ensure that each armed escort, as defined in § 73.2, is instructed on the use of force sufficient to counter the force directed at the person, including the use of deadly force when the armed escort has a reasonable belief that the use of deadly force is necessary in self-defense or in the defense of others, or any other circumstances, as authorized by applicable Federal and State laws. This deadly force training requirement does not apply to members of local law enforcement agencies (LLEAs) performing escort duties for spent nuclear fuel shipments.

(ii) Preplan and coordinate shipment itineraries to ensure that the receiver at the final delivery point is present to accept the shipment.

(iii) Ensure written certification of any transfer of custody.

(iv) Preplan and coordinate shipment information no later than 2 weeks prior to the shipment or prior to the first shipment of a series of shipments with the governor of a State, or the governor's designee, of a shipment of spent nuclear fuel through or across the boundary of the State, in order to:

(A) Minimize intermediate stops and delays;

(B) Arrange for State law enforcement escorts;

(C) Arrange for positional information sharing when requested; and

(D) Develop route information, including the identification of safe havens.

(v) Arrange with local law enforcement authorities along the shipment route, including U.S. ports where vessels carrying spent nuclear fuel shipments are docked, for their response to a security-related emergency or a call for assistance.

(vi) Preplan and coordinate with the NRC to obtain advance approval of the routes used for road and rail shipments of spent nuclear fuel, and of any U.S. ports where vessels carrying spent nuclear fuel shipments are scheduled to stop. In addition to the requirements of this section, routes used for shipping spent nuclear fuel shall comply with the applicable requirements of the DOT regulations in Title 49 of the *Code of Federal Regulations* (49 CFR), in particular those identified in § 71.5 of this chapter. The advance approval application shall provide:

(A) For road shipments, the route shall include locations of safe havens that have been coordinated with the appropriate State(s).

(B) The NRC approval shall be obtained prior to the 10-day advance notification requirement in § 73.72 of this part.

(C) Information to be supplied to the NRC shall include, but is not limited to, the following:

(*1*) Shipper, consignee, carriers, transfer points, modes of shipment; and

(*2*) A statement of shipment security arrangements, including, if applicable, points where armed escorts transfer responsibility for the shipment.

(vii) Document the preplanning and coordination activities.

(viii) Ensure the protection of Safeguards Information relative to spent nuclear fuel in transit in accordance with §§ 73.21 and 73.22 of this part, especially the information described in § 73.22(a)(2), which would include, at a minimum, the protection of the following information:

(A) The preplanning and coordination activities;

(B) Transportation physical security plan;

(C) Schedules and itineraries for specific spent nuclear fuel shipments until the information is no longer controlled as Safeguards Information, that is until at least 10 days after the shipment has entered or originated within the state; or for the case of a shipment in a series of shipments whose schedules are related, a statement that schedule information must be protected until 10 days after the last shipment in the series has entered or originated within the state and an estimate of the date on which the last shipment in the series will enter or originate within the state;

(D) Vehicle immobilization features, intrusion alarm devices, and communications;

(E) Arrangements with and capabilities of local police response forces, and locations of safe havens identified along the transportation route;

(F) Limitations of communications during transport;

(G) Procedures for response to security contingency events;

(H) Information concerning the tactics and capabilities required to defend against attempted sabotage, or theft and diversion of irradiated reactor fuel, or related information; and

(I) Engineering or safety analyses, security-related procedures or scenarios and other information related to the protection of the transported material if the unauthorized disclosure of such analyses, procedures, scenarios, or other information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of theft, diversion, or sabotage of spent nuclear fuel in transit.

(2) *Advance notifications.* Prior to the shipment of spent nuclear fuel moving through or across the boundary of any State, outside the confines of the licensee's facility or other place of use or storage, a licensee subject to this section shall provide notification to the NRC, under § 73.72 of this part, and the governor of the State(s), or the governor's designee(s), of the spent nuclear fuel shipment. After June 11, 2013, the compliance date of the Tribal notification final rule, a licensee subject to this section shall notify the Tribal official or Tribal official's designee of each participating Tribe referenced in § 71.97(c)(3) of this chapter prior to the transport of spent fuel within or across the Tribal reservation. Contact information for each State, including telephone and mailing addresses of governors and governors' designees, and participating Tribes, including telephone and mailing addresses of Tribal officials and Tribal official's designees, is available on the NRC Web site at: *http://nrc-stp.ornl.gov/special/designee.pdf.* A list of the contact information is also available upon request from the Director, Division of Intergovernmental Liaison and Rulemaking, U.S. Nuclear Regulatory Commission, Washington, DC 20555. The licensee shall comply with the following criteria in regard to each notification:

(i) *Procedures for submitting advance notification.* (A) The notification must be in writing and sent to the office of each appropriate governor or the governor's designee and each appropriate Tribal official or the Tribal official's designee.

(B) A notification delivered by mail must be postmarked at least 10 days before transport of a shipment within or through the State or Tribal reservation.

(C) A notification delivered by any other method must reach the office of the governor or the governor's designee and any Tribal official or Tribal official's designee at least 7 days before

transport of a shipment within or through the State.

(ii) *Information to be furnished in advance notification of shipment.* The notification must include the following information:

(A) The name, address, and telephone number of the shipper, carrier and receiver of the shipment and the license number of the shipper and receiver;

(B) A description of the shipment as specified by DOT in 49 CFR 172.202 and 172.203(d); and

(C) A listing of the routes to be used within the State or Tribal reservation.

(iii) *Separate enclosure.* The licensee shall provide the following information, under § 73.22(f)(1), in a separate enclosure to the written notification:

(A) The estimated date and time of departure from the point of origin of the shipment;

(B) The estimated date and time of entry into the State or Tribal reservation;

(C) The estimated date and time of arrival of the shipment at the destination;

(D) For the case of a single shipment whose schedule is not related to the schedule of any subsequent shipment, a statement that schedule information must be protected under the provisions of §§ 73.21 and 73.22 until at least 10 days after the shipment has entered or originated within the State or Tribal reservation; and

(E) For the case of a shipment in a series of shipments whose schedules are related, a statement that schedule information must be protected under the provisions of §§ 73.21 and 73.22 of this part until 10 days after the last shipment in the series has entered or originated within the State or Tribal reservation, and an estimate of the date on which the last shipment in the series will enter or originate within the State or Tribal reservation.

(iv) *Revision notice.* A licensee shall notify by telephone a responsible individual in the office of the governor or in the office of the governor's designee and the office of the Tribal official or in the office of the Tribal official's designee of any schedule change that differs by more than 6 hours from the schedule information previously furnished under paragraph (b)(2)(iii) of this section, and shall inform that individual of the number of hours of advance or delay relative to the written schedule information previously furnished.

(v) *Cancellation notice.* Each licensee who cancels a shipment for which advance notification has been sent shall send a cancellation notice to the governor or to the governor's designee of each State previously notified, each Tribal official or the Tribal official's designee previously notified, and to the NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555. The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being canceled.

(vi) *Records.* The licensee shall retain a copy of the preplanning and coordination activities, advance notification, and any revision or cancellation notice as a record for 3 years under § 73.70 of this part.

(3) *Transportation physical protection program.* (i) The transportation physical protection program established under paragraph (a)(1) of this section shall include armed escorts to protect spent nuclear fuel shipments and a movement control center, as defined in § 73.2 of this part, staffed and equipped to monitor and control spent nuclear fuel shipments, to communicate with local law enforcement authorities, and to respond to safeguards contingencies.

(ii) The movement control center must be staffed continuously by at least one individual who will actively monitor the progress of the spent nuclear fuel shipment and who has the authority to coordinate the physical protection activities.

(iii) The movement control center personnel must monitor the shipment continuously, i.e., 24-hours per day, from the time the shipment commences, or if delivered to a carrier for transport, from the time of delivery of the shipment to the carrier, until safe delivery of the shipment at its final destination, and must immediately notify the appropriate agencies in the event of a safeguards event under the provisions of § 73.71 of this part.

(iv) The movement control center personnel and the armed escorts must maintain a written log for each spent nuclear fuel shipment, which will include information describing the shipment and significant events that occur during the shipment. The log must be available for review by authorized NRC personnel for a period of at least 3 years following completion of the shipment.

(v) The licensee shall develop, maintain, revise and implement written transportation physical protection procedures which address the following:

(A) Access controls to ensure no unauthorized persons have access to the shipment and Safeguards Information;

(B) Roles and responsibilities of the movement control center personnel, drivers, armed escorts and other individuals relative to the security of the shipment;

(C) Reporting of safeguards events under § 73.71 of this part;

(D) Communications protocols that include a strategy for the use of authentication and duress codes, the management of refueling or other stops, detours, and the loss of communications, temporarily or otherwise; and

(E) Normal conditions operating procedures.

(vi) The licensee shall retain as a record the transportation physical protection procedures for 3 years after the close of period for which the licensee possesses the spent nuclear fuel.

(vii) The transportation physical protection program shall:

(A) Provide that escorts (other than members of local law enforcement agencies serving as armed escorts, or ship's officers serving as unarmed escorts) have successfully completed the training required by appendix D of this part, including the equivalent of the weapons training and qualifications program required of guards, as described in sections III and IV of appendix B of this part, to assure that each such individual is fully qualified to use the assigned weapons;

(B) Provide that shipment escorts communicate with the movement control center at random intervals, not to exceed 2 hours, to advise of the status of the shipment for road and rail shipments, and for sea shipments while shipment vessels are docked at U.S. ports; and

(C) Provide that at least one armed escort remains alert at all times, maintains constant visual surveillance of the shipment, and periodically reports to the movement control center at regular intervals not to exceed 30 minutes during periods when the shipment vehicle is stopped, or the shipment vessel is docked.

(4) *Contingency and response procedures.* (i) In addition to the procedures established under paragraph (b)(3)(v) of this section, the licensee shall establish, maintain, and follow written contingency and response procedures to address threats, thefts, and radiological sabotage related to spent nuclear fuel in transit.

(ii) The licensee shall ensure that personnel associated with the shipment shall be appropriately trained regarding contingency and response procedures.

(iii) The licensee shall retain the contingency and response procedures as a record for 3 years after the close of

period for which the licensee possesses the spent nuclear fuel.

(iv) The contingency and response procedures must direct that, upon detection of the abnormal presence of unauthorized persons, vehicles, or vessels in the vicinity of a spent nuclear fuel shipment or upon detection of a deliberately induced situation that has the potential for damaging a spent nuclear fuel shipment, the armed escort will:

(A) Determine whether or not a threat exists;

(B) Assess the extent of the threat, if any;

(C) Implement the procedures developed under paragraph (b)(4)(i) of this section;

(D) Take the necessary steps to delay or impede threats, thefts, or radiological sabotage of spent nuclear fuel; and

(E) Inform local law enforcement agencies of the threat and request assistance without delay, but not to exceed 15 minutes after discovery.

(c) *Shipments by road.* In addition to the provisions of paragraph (b) of this section, the physical protection system for any portion of a spent nuclear fuel shipment by road shall provide that:

(1) The transport vehicle is:

(i) Occupied by at least two individuals, one of whom serves as an armed escort, and escorted by an armed member of the local law enforcement agency in a mobile unit of such agency; or

(ii) Led by a separate vehicle occupied by at least one armed escort, and trailed by a third vehicle occupied by at least one armed escort.

(2) As permitted by law, all armed escorts are equipped with a minimum of two weapons. This requirement does not apply to local law enforcement agency personnel who are performing escort duties.

(3) The transport vehicle and each escort vehicle are equipped with redundant communication abilities that provide 2-way communications between the transport vehicle, the escort vehicle(s), the movement control center, local law enforcement agencies, and one another. To ensure that 2-way communication is possible at all times, alternate communications should not be subject to the same failure modes as the primary communication.

(4) The transport vehicle is equipped with NRC-approved features that permit immobilization of the cab or cargo-carrying portion of the vehicle.

(5) The transport vehicle driver has been familiarized with, and is capable of implementing, transport vehicle immobilization, communications, and other security procedures.

(6) Shipments are continuously and actively monitored by a telemetric position monitoring system or an alternative tracking system reporting to a movement control center. A movement control center shall provide positive confirmation of the location, status, and control over the shipment. The movement control center shall implement preplanned procedures in response to deviations from the authorized route or a notification of actual, attempted, or suspicious activities related to the theft, loss, diversion, or radiological sabotage of a shipment. These procedures shall include, but not be limited to, the identification of and contact information for the appropriate local law enforcement agency along the shipment route.

(d) *Shipments by rail.* In addition to the provisions of paragraph (b) of this section, the physical protection system for any portion of a spent nuclear fuel shipment by rail shall provide that:

(1) A shipment car is accompanied by two armed escorts (who may be members of a local law enforcement agency), at least one of whom is stationed at a location on the train that will permit observation of the shipment car while in motion.

(2) As permitted by law, all armed escorts are equipped with a minimum of two weapons. This requirement does not apply to local law enforcement agency personnel who are performing escort duties.

(3) The train operator(s) and each escort are equipped with redundant communication abilities that provide 2-way communications between the transport, the escort vehicle(s), the movement control center, local law enforcement agencies, and one another. To ensure that 2-way communication is possible at all times, alternate communications should not be subject to the same failure modes as the primary communication.

(4) Rail shipments are monitored by a telemetric position monitoring system or an alternative tracking system reporting to the licensee, third-party, or railroad movement control center. The movement control center shall provide positive confirmation of the location of the shipment and its status. The movement control center shall implement preplanned procedures in response to deviations from the authorized route or to a notification of actual, attempted, or suspicious activities related to the theft, diversion, or radiological sabotage of a shipment. These procedures shall include, but not be limited to, the identification of and contact information for the appropriate local law enforcement agency along the shipment route.

(e) *Shipments by U.S. waters.* In addition to the provisions of paragraph (b) of this section, the physical protection system for any portion of a spent nuclear fuel shipment traveling on U.S. waters shall provide that:

(1) A shipment vessel while docked at a U.S. port is protected by:

(i) Two armed escorts stationed on board the shipment vessel, or stationed on the dock at a location that will permit observation of the shipment vessel; or

(ii) A member of a local law enforcement agency, equipped with normal local law enforcement agency radio communications, who is stationed on board the shipment vessel, or on the dock at a location that will permit observation of the shipment vessel.

(2) As permitted by law, all armed escorts are equipped with a minimum of two weapons. This requirement does not apply to local law enforcement agency personnel who are performing escort duties.

(3) A shipment vessel while within U.S. territorial waters shall be accompanied by an individual, who may be an officer of the shipment vessel's crew, who will assure that the shipment is unloaded only as authorized by the licensee.

(4) Each armed escort is equipped with redundant communication abilities that provide 2-way communications between the vessel, the movement control center, local law enforcement agencies, and one another. To ensure that 2-way communication is possible at all times, alternate communications should not be subject to the same failure modes as the primary communication.

(f) *Investigations.* Each licensee who makes arrangements for the shipment of spent nuclear fuel shall immediately conduct an investigation, in coordination with the receiving licensee, of any shipment that is lost or unaccounted for after the designated no-later-than arrival time in the advance notification.

(g) State officials, State employees, Tribal officials, Tribal employees, and other individuals, whether or not licensees of the NRC, who receive information of the kind specified in paragraph (b)(2)(iii) of this section and any other Safeguards Information as defined in § 73.22(a) of this part shall protect that information against unauthorized disclosure as specified in §§ 73.21 and 73.22 of this part.

■ 4. Section 73.38 is added to read as follows:

§ 73.38 Personnel access authorization requirements for irradiated reactor fuel in transit.

(a) *General.* (1) Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a quantity of spent nuclear fuel as described in § 73.37(a)(1) of this part shall comply with the requirements of this section, as appropriate, before any spent nuclear fuel is transported or delivered to a carrier for transport.

(2) Each licensee shall establish, implement, and maintain its access authorization program under the requirements of this section.

(i) Each licensee shall be responsible for the continuing effectiveness of the access authorization program.

(ii) Each licensee shall ensure that the access authorization program is reviewed at an appropriate frequency to confirm compliance with the requirements of this section and that prompt comprehensive actions are taken to correct any noncompliance that is identified.

(iii) The review shall evaluate all program performance objectives and requirements.

(iv) Each review report must document conditions that are adverse to the proper performance of the access authorization program, the cause of the condition(s), and when appropriate, recommended corrective actions, and corrective actions taken. The licensee shall review the audit findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

(3) By August 19, 2013, each licensee that is subject to this provision shall implement the requirements of this section through revisions to its physical security plan or transportation security plan.

(b) *General performance objective.* The licensee's access authorization program must ensure that the individuals specified in paragraph (c) of this section are trustworthy and reliable such that they do not constitute an unreasonable risk to public health and safety or the common defense and security.

(c) *Applicability.* (1) Licensees shall subject the following individuals to an access authorization program:

(i) Any individual to whom a licensee intends to grant unescorted access to spent nuclear fuel in transit, including employees of a contractor or vendor;

(ii) Any individual whose duties and responsibilities permit the individual to take actions by physical or electronic means that could adversely impact the safety, security, or emergency response to spent nuclear fuel in transit (i.e., movement control personnel, vehicle drivers, or other individuals accompanying spent nuclear fuel shipments);

(iii) Any individual whose duties and responsibilities include implementing a licensee's physical protection program under § 73.37, including but not limited to, non-LLEA armed escorts;

(iv) Any individual whose assigned duties and responsibilities provide access to spent nuclear fuel shipment information that is considered to be Safeguards Information under § 73.22(a)(2); and

(v) The licensee access authorization program reviewing official.

(2) Fingerprinting, and the identification and criminal history records checks required by Section 149 of the Atomic Energy Act of 1954, as amended, and other elements of the background investigation are not required for the following individuals prior to granting access authorization relative to spent nuclear fuel in transit:

(i) Persons identified in §§ 73.59 and 73.61 of this part;

(ii) Federal, State, and local officials, including inspectors, whose occupational status are consistent with the promotion of common defense and security and the protection of public health and safety relative to spent nuclear fuel in transit;

(iii) Emergency response personnel who are responding to an emergency;

(iv) An individual who has had a favorably adjudicated U.S. Government criminal history records check within the last 5 years, under a comparable U.S. Government program involving fingerprinting and an FBI identification and criminal history records check (e.g. National Agency Check, Transportation Worker Identification Credentials (TWIC) under 49 CFR part 1572, Bureau of Alcohol Tobacco Firearms and Explosives background check and clearances under 27 CFR part 555, Health and Human Services security risk assessments for possession and use of select agents and toxins under 42 CFR part 73, Hazardous Material security threat assessment for hazardous material endorsement to commercial drivers license under 49 CFR part 1572, Customs and Border Patrol's Free and Secure Trade (FAST) Program) provided that he or she makes available the appropriate documentation. Written confirmation from the agency/employer that granted the Federal security clearance or reviewed the criminal history records check must be provided to the licensee. The licensee shall retain this documentation for a period of 3 years from the date the individual no longer requires access authorization relative to spent nuclear fuel in transit; and

(v) Any individual who has an active Federal security clearance, provided that he or she makes available the appropriate documentation. Written confirmation from the agency/employer that granted the Federal security clearance or reviewed the criminal history records check must be provided to the licensee. The licensee shall retain this documentation for a period of 3 years from the date the individual no longer requires access authorization relative to spent nuclear fuel in transit.

(d) *Background investigation.* Before allowing an individual to have unescorted access or access authorization relative to spent nuclear fuel [2] in transit the licensees shall complete a background investigation as defined in § 73.2 of this part of the individual seeking to have unescorted access or access authorization. The scope of the investigation must encompass at least the past 10 years, or if 10 years of information is not available then as many years in the past that information is available. The background investigation does not apply to Federal, State or local law enforcement personnel who are performing escort duties. The background investigation must include, but is not limited to, the following elements:

(1) *Informed consent.* Licensees shall not initiate any element of a background investigation without the informed and signed consent of the subject individual. This consent shall include authorization to share personal information with appropriate entities. The licensee to whom the individual is applying for access authorization shall inform the individual of his or her right to review information collected to assure its accuracy, and provide the individual with an opportunity to correct any inaccurate or incomplete information that is developed by the licensee.

(i) The subject individual may withdraw his or her consent at any time. Licensees shall inform the individual that:

(A) Withdrawal of his or her consent will remove the individual's application for access authorization under the licensee's access authorization program; and

(B) Other licensees shall have access to information documenting the withdrawal.

[2] For purposes of 10 CFR 73.38, the terms ''irradiated reactor fuel'' as described in 10 CFR 73.37 and ''spent nuclear fuel'' are used interchangeably.

(ii) If an individual withdraws his or her consent, licensees may not initiate any elements of the background investigation that were not in progress at the time the individual withdrew his or her consent, but shall complete any background investigation elements that are in progress at the time consent is withdrawn. The licensee shall record the status of the individual's application for access authorization. Additionally, licensees shall collect and maintain the individual's application for access authorization; his or her withdrawal of consent for the background investigation; the reason given by the individual for the withdrawal; and any pertinent information collected from the background investigation elements that were completed. This information must be shared with other licensees under paragraph (l)(4) of this section.

(iii) Licensees shall inform, in writing, any individual who is applying for access authorization that the following actions are sufficient cause for denial or unfavorable termination of access authorization status:

(A) Refusal to provide a signed consent for the background investigation;

(B) Refusal to provide, or the falsification of, any personal history information required under this section, including the failure to report any previous denial or unfavorable termination of access authorization;

(C) Refusal to provide signed consent for the sharing of personal information with other licensees under paragraph (d)(5)(v) of this section; or

(D) Failure to report any arrests or legal actions specified in paragraph (f) of this section.

(2) *Personal history disclosure.* Any individual who is required to have a background investigation under this section shall disclose the personal history information that is required by the licensee's access authorization program for the reviewing official to make a determination of the individual's trustworthiness and reliability. Refusal to provide, or the falsification of, any personal history information required by this section is sufficient cause for denial or termination of access authorization.

(3) *Criminal history.* Fingerprinting and an FBI identification and criminal history records check under § 73.57 of this part.

(4) *Verification of true identity.* Licensees shall verify the true identity of an individual who is applying to have access authorization to ensure that the applicant is who they claim to be. A licensee shall review official identification documents (e.g., driver's license, passport, government identification, State, province, or country of birth issued certificate of birth) and compare the documents to personal information data provided by the individual to identify any discrepancy in the information. Licensees shall document the type, expiration, and identification number of the identification, or maintain a photocopy of identifying documents on file under § 73.38(c). Licensees shall certify and affirm in writing that the identification was properly reviewed and maintain the certification and all related documents for review upon inspection.

(5) *Employment history evaluation.* Licensees shall ensure that an employment history evaluation has been completed on a best effort basis, by questioning the individual's present and former employers, and by determining the activities of the individual while unemployed.

(i) For the claimed employment period, the individual must provide the reason for any termination, eligibility for rehire, and other information that could reflect on the individual's trustworthiness and reliability.

(ii) If the claimed employment was military service the individual shall provide a characterization of service, reason for separation, and any disciplinary actions that could affect a trustworthiness and reliability determination.

(iii) If education is claimed in lieu of employment, the individual shall provide any information related to the claimed education that could reflect on the individual's trustworthiness and reliability and, at a minimum, verify that the individual was registered for the classes and received grades that indicate that the individual participated in the educational process during the claimed period.

(iv) If a previous employer, educational institution, or any other entity with which the individual claims to have been engaged fails to provide information or indicates an inability or unwillingness to provide information within 3 business days of the request, the licensee shall:

(A) Document this refusal or unwillingness in the licensee's record of the investigation; and

(B) Obtain a confirmation of employment, educational enrollment and attendance, or other form of engagement claimed by the individual from at least one alternate source that has not been previously used.

(v) When any licensee is seeking the information required for an access authorization decision under this section and has obtained a signed release from the subject individual authorizing the disclosure of such information, other licensees shall make available the personal or access authorization information requested regarding the denial or unfavorable termination of an access authorization.

(vi) In conducting an employment history evaluation, the licensee may obtain information and documents by electronic means, including, but not limited to, telephone, facsimile, or email. Licensees shall make a record of the contents of the telephone call and shall retain that record, and any documents or electronic files obtained electronically, under paragraph (l) of this section.

(6) *Credit history evaluation.* Licensees shall ensure the evaluation of the full credit history of any individual who is applying for access authorization relative to spent nuclear fuel in transit. A full credit history evaluation must include, but is not limited to, an inquiry to detect potential fraud or misuse of social security numbers or other financial identifiers, and a review and evaluation of all of the information that is provided by a national credit-reporting agency about the individual's credit history. For foreign nationals and U.S. citizens who have resided outside the U.S. and do not have established credit history that covers at least the most recent 7 years in the U.S., the licensee must document all attempts to obtain information regarding the individual's credit history and financial responsibility from some relevant entity located in that other country or countries.

(7) *Criminal history review.* The licensee shall evaluate the entire criminal history record of an individual who is applying for access authorization to determine whether the individual has a record of criminal activity that may adversely impact his or her trustworthiness and reliability. The scope of the applicant's criminal history review must cover all residences of record for the 10-year period preceding the date of application for access authorization.

(8) *Character and reputation determination.* Licensees shall ascertain the character and reputation of an individual who has applied for access authorization relative to spent nuclear fuel in transit by conducting reference checks. Reference checks may not be conducted with any person who is known to be a close member of the individual's family, including but not limited to, the individual's spouse, parents, siblings, or children, or any individual who resides in the

individual's permanent household. The reference checks must focus on the individual's reputation for trustworthiness and reliability.

(9) *Corroboration.* The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the individual (e.g., seek references not supplied by the individual).

(e) *Determination of trustworthiness and reliability; Documentation.* (1) The licensee shall determine whether to grant, deny, unfavorably terminate, maintain, or administratively withdraw an individual's access authorization based on an evaluation of all of the information required by this section. The licensee may terminate or administratively withdraw an individual's access authorization based on information obtained after the background investigation has been completed and the individual granted access authorization.

(2) The licensee may not permit any individual to have unescorted access or access authorization until all of the information required by this section has been evaluated by the reviewing official and the reviewing official has determined that the individual is trustworthy and reliable. The licensee may deny unescorted access or access authorization to any individual based on disqualifying information obtained at any time during the background investigation.

(f) *Protection of information.* (1) Licensees shall protect background investigation information from unauthorized disclosure.

(2) Licensees may not disclose the background investigation information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to know in performing assigned duties related to the process of granting or denying unescorted access to spent nuclear fuel in transit. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need to know.

(3) The personal information obtained on an individual from a background investigation may be transferred to another licensee:

(i) Upon the individual's written request to the licensee holding the data to re-disseminate the information contained in his/her file; and

(ii) The acquiring licensee verifies information such as name, date of birth, social security number, sex, and other applicable physical characteristics for identification.

(4) The licensee shall make background investigation records obtained under this section available for examination by an authorized representative of the NRC to determine compliance with applicable laws and regulations.

(5) The licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the file has been transferred, on an individual (including data indicating no record) for 5 years from the date the individual no longer requires unescorted access or access authorization relative to spent nuclear fuel in transit.

(g) *Grandfathering.* For purposes of this section, licensees are not required to obtain the fingerprints of any person who has been fingerprinted, pursuant to an NRC order or regulation, for an FBI identification and criminal history records check within the 5 years of the effective date of this rule.

(h) *Reinvestigations.* Licensees shall conduct fingerprinting and FBI identification and criminal history records check, a criminal history review, and credit history re-evaluation every 10 years for any individual who has unescorted access authorization to spent nuclear fuel in transit. The reinvestigations must be completed within 10 years of the date on which these elements were last completed and should address the 10 years following the previous investigation.

(i) *Self-reporting of legal actions.* (1) Any individual who has applied for an access authorization or is maintaining an access authorization under this section shall promptly report to the reviewing official, his or her supervisor, or other management personnel designated in licensee procedures any legal action(s) taken by a law enforcement authority or court of law to which the individual has been subject that could result in incarceration or a court order or that requires a court appearance, including but not limited to an arrest, an indictment, the filing of charges, or a conviction, but excluding minor civil actions or misdemeanors such as parking violations or speeding tickets. The recipient of the report shall, if other than the reviewing official, promptly convey the report to the reviewing official. On the day that the report is received, the reviewing official shall evaluate the circumstances related to the reported legal action(s) and re-determine the reported individual's access authorization status.

(2) The licensee shall inform the individual of this obligation, in writing, prior to granting unescorted access or certifying access authorization.

(j) *Access authorization procedures.* (1) Licensees shall develop, implement, and maintain written procedures for conducting background investigations for persons who are applying for unescorted access or access authorization for spent nuclear fuel in transit.

(2) Licensees shall develop, implement, and maintain written procedures for updating background investigations for persons who are applying for reinstatement of unescorted access or access authorization.

(3) Licensees shall develop, implement, and maintain written procedures to ensure that persons who have been denied unescorted access or access authorization are not allowed access to spent nuclear fuel in transit or information relative to spent nuclear fuel in transit.

(4) Licensees shall develop, implement, and maintain written procedures for the notification of individuals who are denied unescorted access or access authorization for spent nuclear fuel in transit. The procedures shall include provisions for the review, at the request of the affected individual, of a denial or termination of unescorted access or access authorization. The procedure must contain a provision to ensure that the individual is informed of the grounds for the denial or termination of unescorted access or access authorization and allow the individual an opportunity to provide additional relevant information.

(k) *Right to correct and complete information.* (1) Prior to any final adverse determination, licensees shall provide each individual subject to this section with the right to complete, correct, and explain information obtained as a result of the licensee's background investigation. Confirmation of receipt by the individual of this notification must be maintained by the licensee for a period of 1 year from the date of the notification.

(2) If after reviewing their criminal history record an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, update, or explain anything in the record, the individual may initiate challenge procedures.

(l) *Records.* (1) The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for 5 years from the date the individual no longer requires unescorted access or access authorization relative to spent nuclear fuel in transit.

(2) The licensee shall retain a copy of the current access authorization program procedures as a record for 5

years after the procedure is no longer needed or until the Commission terminates the license, if the license is terminated before the end of the retention period. If any portion of the procedure is superseded, the licensee shall retain the superseded material for 5 years after the record is superseded.

(3) The licensee shall retain the list of persons approved for unescorted access or access authorization and the list of those individuals that have been denied unescorted access or access authorization for 5 years after the list is superseded or replaced.

(4) Licensees who have been authorized to add or manipulate data that is shared with licensees subject to this section shall ensure that data linked to the information about individuals who have applied for unescorted access or access authorization, which is specified in the licensee's access authorization program documents, is retained.

(i) If the shared information used for determining individual's trustworthiness and reliability changes or new or additional information is developed about the individual, the licensees that acquire this information shall correct or augment the data and ensure it is shared with licensees subject to this section. If the changed, additional or developed information has implications for adversely affecting an individual's trustworthiness and reliability, licensees who discovered or obtained the new, additional or changed information, shall, on the day of discovery, inform the reviewing official of any licensee access authorization program under which the individual is maintaining his or her unescorted access or access authorization status of the updated information.

(ii) The reviewing official shall evaluate the shared information and take appropriate actions, which may include denial or unfavorable termination of the individual's unescorted access or access authorization. If the notification of change or updated information cannot be made through usual methods, licensees shall take manual actions to ensure that the information is shared as soon as reasonably possible. Records maintained in any database(s) must be available for the NRC review.

(5) If a licensee administratively withdraws an individual's unescorted access or access authorization status caused by a delay in completing any portion of the background investigation or for a licensee initiated evaluation, or re-evaluation that is not under the individual's control, the licensee shall record this administrative action to withdraw the individual's unescorted access or unescorted access authorization and shall share this information with other licensees subject to this section. However, licensees shall not document this administrative withdrawal as denial or unfavorable termination and shall not respond to a suitable inquiry conducted under the provisions of 10 CFR part 26, a background investigation conducted under the provisions of this section, or any other inquiry or investigation as denial nor unfavorable termination. Upon favorable completion of the background investigation element that caused the administrative withdrawal, the licensee shall immediately ensure that any matter that could link the individual to the administrative action is eliminated from the subject individual's access authorization or personnel record and other records, except if a review of the information obtained or developed causes the reviewing official to unfavorably terminate or deny the individual's unescorted access.

§ 73.71 [Amended]

■ 5. In § 73.71, paragraph (a)(1), redesignate footnote 1 as footnote 3.

■ 6. In § 73.72, paragraphs (a) introductory text, (a)(1), (a)(4), (a)(5), and (b) are revised to read as follows:

§ 73.72 Requirement for advance notice of shipment of formula quantities of strategic special nuclear material, special nuclear material of moderate strategic significance, or irradiated reactor fuel.

(a) A licensee, other than one specified in paragraph (b) of this section, who, in a single shipment, plans to deliver to a carrier for transport, to take delivery at the point where a shipment is delivered to a carrier for transport, to import, to export, or to transport a formula quantity of strategic special nuclear material, special nuclear material of moderate strategic significance, or irradiated reactor fuel [4] required to be protected in accordance with § 73.37, shall:

(1) Notify in writing the Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555, using any appropriate method listed in § 73.4 of this part. Classified and safeguards notifications shall be sent to the NRC headquarters classified mailing address listed in appendix A to this part.

* * * * *

(4) The NRC Headquarters Operations Center shall be notified about the shipment status by telephone at the phone numbers listed in appendix A to this part. Classified and safeguards notifications shall be made by secure telephone. The notifications shall take place at the following intervals:

(i) At least 2 days before commencement of the shipment;

(ii) Two hours before commencement of the shipment; and

(iii) Once the shipment is received at its destination.

(5) The NRC Headquarters Operations Center shall be notified by telephone of schedule changes of more than 6 hours at the phone numbers listed in appendix A to this part. Classified and safeguards notifications shall be made by secure telephone.

(b) A licensee who conducts an on-site transfer of spent nuclear fuel that does not travel upon or cross a public highway is exempt from the requirements of this section for that transfer.

Dated at Rockville, Maryland, this 10th day of May, 2013.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 2013–11717 Filed 5–17–13; 8:45 am]

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[4] For purposes of 10 CFR 73.72, the terms ''irradiated reactor fuel'' as described in 10 CFR 73.37 and ''spent nuclear fuel'' are used interchangeably.

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Reducing Flight Delays Act of 2013 (May 1, 2013; 127 Stat. 443)

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